

No. 05-19-00607-CV

In the Court of Appeals
For the Fifth Court of Appeals District
Dallas Texas

FILED IN
5th COURT OF APPEALS
DALLAS, TEXAS
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LISA MATZ
Clerk

Peter Beasley,

Plaintiff – Appellant,

v.

Society of Information Management,
Dallas Area Chapter, et. al.

Defendants – Appellees

Appeal from the 191st Judicial District Court, Dallas County,
Texas

Trial Court Cause No. DC-18-05278
The Honorable Judge Gena Slaughter

APPELLANT’S BRIEF ON THE MERITS

Peter Beasley, *pro se*
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ORAL ARGUMENT REQUESTED

I. IDENTITIES OF PARTIES

1. Appellant - Plaintiff is PETER BEASLEY, a resident of Dallas County, Texas.

Mr. Beasley is appearing *pro se* before this court.

2. Appellee – the primary Defendant is the SOCIETY OF INFORMATION MANAGEMENT, DALLAS AREA CHAPTER, (“SIM-DFW”), a Texas Corporation.

3. Appellees SIM Dallas, Janis O’Bryan, and Nellson Burns are represented by Robert Bragalone and Soña Garcia of Gordon Rees Scully Mansukhani, 2200 Ross Avenue, Suite 4100, Dallas, TX 75201-2708, and by Peter Vogel of Foley Gardere LLP, 2021 McKinney Ave. Ste. 1600, Dallas, TX 75201.

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IV. STATEMENT OF THE CASE

Beasley, as amended, filed Breach of Contract, Fraudulent Inducement, Defamation, Tortuous Interference, Declaratory Judgment, Due Process, and Injunctive causes of actions¹. On December 11, 2018, the court entered a Prefiling Order² under the Texas Vexatious Litigant statute – the judgment under appeal.

V. STATEMENT REGARDING ORAL ARGUMENT

Oral argument is requested to help simplify the facts that the *pro se* appellant may not have presented clearly in written form.

VI. NOTICE OF APPEAL UNDER RULE 34.6(c)

May 28, 2018, Beasley gave notice of an appeal under Rule 34.6 (c). Tex. R. App. P. 34.6(c). *Bennett v. Cochran*, 96 S.W.3d 227, 228-30 (Tex. 2002) (per curiam)(avoids the ordinary presumption that items omitted from the record support the judgment)

¹ C.R. 629 - 648. App. Tab B, p. A3.

² C.R. 1,259 – 1,260, App. Tab A, p. A1.

VII. FOUR ISSUES PRESENTED

5. Whether a Prefiling Order may stand against a litigant when defendants completely ignored the statute and presented no evidence at all that the litigant had no reasonable probability to prevail on his claims?

6. Whether a counter-plaintiff may preemptively complain that a counter-defendant is a vexatious litigant when the counter-plaintiff is the plaintiff that filed the lawsuit, as Texas has no cognizable independent cause of action to do so?

7. Whether a party can seek to declare a citizen a vexatious litigant by filing a motion 93 days after the filing of a document which provided a ground for avoidance of the lawsuit?

8. Whether the Prefiling Order is unconstitutionally overbroad, as the order unnecessarily eliminates a citizen's right to an *ex parte* restraining order or an *ex parte* protective order for the rest of that person's life?

VIII. STATEMENT OF FACTS

Beasley did file lawsuit, No. 296-05741-2017, against three defendants in Collin County on November 30, 2017³. The tort claims, as amended, against the corporate defendant, SIM DFW, included fraudulent inducement, breach of contract, defamation, and tortious interference⁴. Beasley sued the individual defendants on a derivative action on behalf of SIM-DFW⁴.

All three defendants responded to the lawsuit by first filing a Motion to Transfer Venue on January 16, 2018⁵. Their pleading includes “Peter Beasley is a vexatious litigant⁶” and prayed that “Peter Beasley take nothing by way of his claims.”⁷

March 2, 2018, SIM DFW, as a counter-plaintiff, sued Beasley, a counter-defendant, for declaratory judgment relief and defendant Burns, as a counter-plaintiff, sued Beasley for defamation⁸.

³ C.R. 1362

⁴ C.R. 629 – 648, Tab B, p. A3 – A22.

⁵ C.R. 22 - 628

⁶ C.R. 29

⁷ C.R. 32

⁸ C.R. 649. Tab F. p. A70 – 81.

The 296th District Court of Collin County transferred the controversy on April 18, 2018⁹, and the next day, April 19, 2018, which was 93 days after their first pleading was filed, all three defendants filed a Motion to Declare Peter Beasley a vexatious litigant in Dallas County¹⁰.

To advance their counter-claims and to have the lawsuit filed in Dallas County, defendant Burns paid the \$123.00 copy / transfer fee in Collin County¹¹ and defendant SIM-DFW paid the \$292.00 Dallas County filing fee¹². Rules of the Clerks of both Collin¹³ and Dallas County¹⁴ require those fees are to be paid by the plaintiff.

The “new case filed” on April 19, 2018, is DC-18-05278¹⁵.

Beasley responded to defendants’ motion with several defenses¹⁶, including that 1) Defendants would be unable to show Beasley had no probability to prevail in all of his claims¹⁷, 2) he did not file the lawsuit

⁹ C.R. 662

¹⁰ C.R. 663 - 989

¹¹ C.R. 1367

¹² C.R. 21

¹³ C.R. 1357 - 1358

¹⁴ C.R. 1359, Tab G, p. A82.

¹⁵ C.R. 6

¹⁶ C.R. 1057 – 1085, Tab D, p. A38 – A66

¹⁷ C.R. 1061, Tab D, p. A42

in Dallas County¹⁸, 3) defendants’ motion was late filed¹⁹, and 4) the Vexatious Litigant statute was unconstitutionally overbroad²⁰.

The trial court, the 191st Judicial District Court, held a hearing on September 20, 2018, on defendants’ vexatious litigant motion²¹. At the hearing, defendants offered no sworn testimony and introduced no evidence that Beasley had no probability to prevail on all of his claims. About Beasley’s constitutional challenges, the trial judge stated:

“This issue about the constitutionality of somebody being ruled a vexatious litigant, I don't think that's my job. I mean, I hate to say, I think that usually has to be raised in the Appellate Court or in the Supreme Court, I don't think that I go there.”²²

On December 11, 2018, the trial court granted defendants’ motion and entered a Prefiling Order²³ – to which Beasley appeals.

¹⁸ C.R. 1063, Tab D, p. A44.

¹⁹ C.R. 1061 – 1063, Tab D, p. A42 – A44.

²⁰ C.R. 1065 – 1067, Tab D, p. A46 – A48

²¹ RR.1 September 20, 2018 hearing transcript

²² R.R.2 April 5, 2019, hearing transcript: 49:10 – 15.

²³ C.R. 1259

IX. SUMMARY OF THE ARGUMENT

A Prefiling Order may only stand from a proper determination that a party has been declared a vexatious litigant. While defendants may have pursued such a determination in Collin County, Beasley did nothing to cause defendants to be sued in Dallas County. He fought the transfer to Dallas County, he did not pay the copy / transfer fees, and he did not pay the filing fee. Hardly can defendants complain about being sued when it was their own actions, as counter-plaintiffs, that caused the lawsuit to be filed. There is no such declaration of a vexatious defendant.

Even if they had tried in Collin County, the evidence was legally insufficient to declare anyone a vexatious litigant. Beasley is not a vexatious litigant. Furthermore, defendant's request was too late.

Lastly, the Prefiling Order is unconstitutional, as it eliminates a right to obtain an ex parte temporary restraining or protective orders without hiring a lawyer, which imposes a restrictive financial bar, when this rights deprivation could be achieved through less restrictive means.

X. THIS COURT HAS JURISDICTION

A Prefiling Order may be appealed²⁴; however the statute stands silent on whether that appeal is 1) by interlocutory appeal, 2) by mandamus, or 3) by a direct appeal at the conclusion of the proceedings.

May 15, 2019, this court indicated the Prefiling Order is subject to an interlocutory appeal²⁵. TAB C, P. A36. *See, Nunu v. Risk*, 567 S.W.3d 462, 466–67 (Tex. App.—Houston [14th Dist.] 2019). The *Nunu* ruling however was issued on January 15, 2019, the last day for Beasley to file an out-of-time interlocutory appeal of the December 11, 2018 judgment.

Mercifully, January 11, 2019, Plaintiff’s counsel filed a Motion for Reconsideration within the period to perfect an interlocutory appeal with an extension of time. The motion indicates Beasley’s desire to reverse the Prefiling Order²⁶, where the substance of a pleading determines its nature, not merely the title given to it. *Johnson v. State Farm Lloyds*, 204 S.W.3d 897, 906 (Tex.App.-Dallas 2006, pet. filed). It is unmistakable that Beasley desired to challenge and reverse the Prefiling order.

²⁴ TEX. CIV. PRAC. & REM. CODE § 11.101 (c)

²⁵ 05-19-00422-CV, Memorandum Opinion, Justice Molberg

²⁶ C.R. 1261 – 1341

The Supreme Court has instructed the courts of appeals to construe the Rules of Appellate Procedure reasonably, yet liberally, so that the right to appeal is not lost by imposing requirements not absolutely necessary to effect the purpose of a rule. *Verburt v. Dorner*, 959 S.W.2d 615, 617 (Tex. 1997). The required motion for an extension of time to be filed in the appeals court may be necessarily implied. *See, Verburt, Id.*, at 617 - 618.

Given the automatic stay in trial proceedings, there is no necessary purpose to enforce a strict reading of the appellate rules to disallow the appeal. The underlying judgment is interlocutory, and no “finality of a judgment” is threatened.

The facts are the same. Whether by mandamus, interlocutory appeal, or by a subsequent direct appeal, the trial court’s error in declaring Beasley a vexatious litigant is easily seen and should be reversed. TEX. R. CIV. P. 1.

Given these facts, this court has the discretion to find jurisdiction over this appeal of the Prefiling Order and resolve the underlying vexatious litigant dispute, once and for all.

XI. ARGUMENT

ISSUE 1: WHETHER A PREFILING ORDER MAY STAND AGAINST A LITIGANT WHEN DEFENDANTS COMPLETELY IGNORED THE STATUTE AND PRESENTED NO EVIDENCE AT ALL THAT THE LITIGANT HAD NO REASONABLE PROBABILITY TO PREVAIL ON HIS CLAIMS?

Before a court may issue a Prefiling Order, it must find that the plaintiff is a vexatious litigant. *See, Nunu, Id.* at 467. To declare a litigant vexatious, the defendant must show that the plaintiff had no reasonable ability to prevail on his claims. TEX. CIV. PRAC. & REM. CODE § 11.054.

But, at the hearing, defendants only made arguments, and failed to introduce any evidence showing why Beasley could not prevail on his suit. *Amir-Sharif v. Quick Trip Corp.*, 416 S.W.3d 914, 919 (Tex. App.-Dallas 2013, no pet.) (noting also that a defendant who fails to offer any evidence showing why the plaintiff could not prevail on his suit has failed to meet its burden).

In Nunu, the Houston court of appeals found that a prior nonsuit, with prejudice, was sufficient to show that Paul Nunu could not prevail in his current lawsuit. Similarly, a prior adverse judgment or a showing that a statute of limitations prevented a lawsuit could be legally

sufficient evidence that a litigant could not prevail against a particular defendant, on certain specific claims.

But in this instant case, there were three (3) defendants and thirteen (13) claims²⁷. At no time during the hearing did any of the defendants provide evidence that Beasley could not prevail on all of his claims. As a result, the evidence was legally insufficient to declare Beasley a vexatious litigant, hence the Prefiling Order was entered as an abuse of discretion. *See, Amir-Sharif, Id.*

ISSUE 2: WHETHER A COUNTER-PLAINTIFF MAY PREEMPTIVELY COMPLAIN THAT A COUNTER-DEFENDANT IS A VEXATIOUS LITIGANT WHEN THE COUNTER-PLAINTIFF IS THE PLAINTIFF THAT FILED THE LAWSUIT, AS TEXAS HAS NO COGNIZABLE INDEPENDENT CAUSE OF ACTION TO DO SO?

There is no Texas independent cause of action; where a defendant may seek to declare a plaintiff a vexatious litigant *only* in a lawsuit filed by the plaintiff. But Beasley did not file the lawsuit in Dallas County, defendants did! There is no such thing as a vexatious defendant, as the statute clearly provides only for a **defendant to find**

²⁷ C.R. 638 –647, 2nd Amended Petition, App. Tab B, p. Ax

a plaintiff vexatious “if the litigation against the defendant”. TEX. CIV. PRAC. & REM. CODE § 11.054.

Beasley does concede, that if there was evidence to do so (and he maintains there wasn't), Defendants may have sought to declare Beasley a vexatious litigant in Collin County, where Beasley did file a lawsuit.

Chapter 11 of the Texas Civil Practice and Remedies Code provides the mechanism to restrict frivolous and vexatious litigation. See TEX. CIV. PRAC. & REM. CODE § 11.051; *Harris v. Rose*, 204 S.W.3d 903, 905 (Tex. App.-Dallas 2006, no pet.). In this chapter, the Texas Legislature sought to strike a balance between Texans' right of access to the courts and the public interest in protecting defendants from those who abuse the Texas court system by systematically filing lawsuits with little or no merit. *Willms v. Americas Tire Co.*, 190 S.W.3d 796, 804 (Tex.App.-Dallas 2006, pet. denied). The purpose behind the statute was to curb vexatious litigation by requiring plaintiffs found by the court to be "vexatious" to post security for costs before proceeding with a lawsuit. *Id.*

There is no good faith reason to transfer a frivolous lawsuit to another county²⁸. The statute contemplates for a defendant within 90 days of the institution of a lawsuit by a plaintiff to quickly curb and stop a frivolous lawsuit. And rightfully so!

But here, Defendants, instead are attempting to create a proactive, independent cause of action, not cognizable under Texas law.

Defendants petitioned to transfer the lawsuit to Dallas County. April 10, 2018, defendants, as counter-plaintiffs, *intentionally* paid the copy fee²⁹ in Collin County to transfer *their* lawsuit, and once the lawsuit was in Dallas County, they immediately filed a motion April 19, 2019, to find Beasley a vexatious litigant. On, April 20, 2018, defendants *intentionally* paid the filing fee³⁰ when there was **absolutely no need for them to do so**, as the lawsuit had already been filed in Dallas County. It is unmistakable that Defendants wanted to pursue their claims against Beasley, including declaring him a vexatious litigant; although Beasley had done nothing to sue Defendants in Dallas County.

²⁸ On the filing of a motion under Section 11.051, the litigation is stayed and the moving defendant is not required to plead. TEX. CIV. PRAC. & REM. CODE § 11.052 (a)

²⁹ C.R. 1,367

³⁰ C.R. 10

Any complaint Defendants have by being sued in Dallas County they cannot maintain as they invited the lawsuit. No one would rightfully pay their opponents fees to have themselves sued; the logical presumption is that the counter-plaintiffs filed the lawsuit, and not Beasley. Doctrines of equitable estoppel, invited error, inconsistent actions, and the doctrine of laches all bar the counter-plaintiffs from filing the lawsuit late, in a second county, to proactive declare a counter-defendant vexatious.

And Beasley properly pled to assert these affirmative defenses.³¹

Based on their delay in pursuing a vexatious litigant finding within the first 90 days in Collin County, Beasley relied on their delay and did then maintain his complaints against defendants in Dallas County. In particular, Defendant SIM-DFW sued Beasley for declaratory judgment³² *in exact, direct opposition* to Beasley's declaratory judgment³³ against SIM-DFW. Hardly can SIM-DFW complain about being sued in opposition to how they sued Beasley.

³¹ C.R. 998, Tab E, p. A67.

³² C.R. 653, Tab F, p. A74.

³³ C.R. 641, Tab B, p. A15.

The elements of laches are: (1) unreasonable delay by one having legal or equitable rights in asserting them and (2) a good faith change in position by another to his detriment because of the delay. *Rogers v. Ricane Enterprises, Inc.*, 772 S.W.2d 76, 80 (Tex.1989).

It was unreasonable for defendants to wait for more than 110 days of when they learned they had been sued³⁴ in Collin County before they filed their vexatious litigant motion, as they had previously attempted another late-filed declaration against Beasley nearly one year earlier.³⁵

Defendants may not lie behind the log, transfer the lawsuit across two Texas counties, into 4 other district courts³⁶, and involve 5 additional district and presiding judges³⁷ and their clerks, and then jump-up and cry that there was some foul. Defendants may not file a lawsuit and sue Beasley that requires him to pursue his counter-claims, to entrap him as being a vexatious plaintiff. The vexatious litigant statute does authorize a court for such a use.

³⁴ C.R. 7. All defendants were served with notice of the lawsuit on 12-28-2017.

³⁵ C.R. 1262 In 2017, the “162nd District Court found that Defendants' vexatious litigant motion was untimely filed.”

³⁶ The 296th, 44th, 162nd, and 191st District Courts.

³⁷ The Honorable Judges John Roach, Jr.; Bonnie Lee Goldstein; Maricela Moore; Regional Presiding Judge Ray Wheless; and Gena Slaughter.

ISSUE 3: WHETHER A PARTY CAN SEEK TO DECLARE A CITIZEN A VEXATIOUS LITIGANT BY FILING A MOTION 93 DAYS AFTER THE FILING OF A DOCUMENT WHICH PROVIDED A GROUND FOR AVOIDANCE OF THE LAWSUIT?

On page 8 of Defendants' January 16, 2018, motion to transfer venue³⁸, they added the phrase "Beasley is a vexatious litigant" and added in their prayer³⁹, "Defendants pray that Plaintiff Peter Beasley take nothing by way of his claims, that Defendants recover their attorneys' fees, costs and expenses as allowed by law".

By rule:

The original answer may consist of motions to transfer venue, pleas to the jurisdiction, in abatement, or any other dilatory pleas; of special exceptions, of general denial, ***and any defense by way of avoidance or estoppel***, and it may present a cross-action, which to that extent will place defendant in the attitude of a plaintiff.

Defendants added a defense to the lawsuit in their Motion to Transfer Venue, making that pleading an answer, and therefore defendants' April 19, 2018, vexatious litigant motion was 3 days too late.

³⁸ C.R. 29

³⁹ C.R. 32

It is an abuse of discretion to grant a vexatious litigant motion filed more than 90 days after an answer. *See Dishner v. Huitt-Zollars, Inc.*, 162 S.W.3d 370, 377 (Tex. App.-Dallas 2005, no pet.) (holding the trial court abused its discretion in declaring appellant a vexatious litigant because motion filed outside the ninety-day time period)

ISSUE 4: WHETHER THE PREFILING ORDER IS UNCONSTITUTIONALLY OVERBROAD, AS THE ORDER UNNECESSARILY ELIMINATES A CITIZEN'S RIGHT TO AN EX PARTE RESTRAINING ORDER OR AN EX PARTE PROTECTIVE ORDER FOR THE REST OF THAT PERSON'S LIFE?

This appears to be a consideration of first impression.

To protect people from family violence, all citizens in Texas may obtain protective orders, and when necessary, such orders may be obtained ex parte⁴⁰. Likewise, litigants may obtain ex parte relief when filing a lawsuit to protect the status quo. *See, Qwest Commc'n Corp. v. AT&T Corp.*, 24 S.W.3d 334, 337 (Tex. 2000) (per curiam).

⁴⁰ If the court finds from the information contained in an application for a protective order that there is a clear and present danger of family violence, the court, without further notice to the individual alleged to have committed family violence and without a hearing, may enter a temporary ex parte order for the protection of the applicant or any other member of the family or household of the applicant. TEX. FAM. CODE § 83.001 (a).

However, a Prefiling Order and Chapter 11 of the Vexatious Litigant requires:

A vexatious litigant subject to a prefilng order under Section 11.101 who files a request seeking permission to file a litigation ***shall provide a copy of the request to all defendants*** named in the proposed litigation. TEX. CIV. PRAC. & REM. CODE § 11.102 (b).

As a result, a vexatious litigant cannot seek an *ex parte* order as he may not file a lawsuit, *pro se*, without first informing the defendants.

Article I, section 13 of the Texas Constitution provides in part that "all courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law." Tex. Const. art. 1 § 13.; *Howell v. Texas Workers' Comp. Comm'n*, 143 S.W.3d 416, 444 (Tex.App.-Austin 2004, pet. denied). "The open courts provision includes at least three separate guarantees: (1) courts must actually be operating and available; (2) the Legislature cannot impede access to the courts through unreasonable financial barriers; and (3) meaningful remedies must be afforded, `so that the legislature may not abrogate the right to assert a well-established common law cause of action unless the reason for its action outweighs the litigants' constitutional right of redress.'" *Howell*, 143 S.W.3d at 444.

A claim of unconstitutionality under the open courts provision will only succeed if the claimant (1) has a cognizable common-law cause of action being restricted by a statute, and (2) the restriction is unreasonable or arbitrary when balanced against the purpose and basis of the statute. *Rose v. Doctors Hosp.*, 801 S.W.2d 841, 843 (Tex.1990). In applying this test, the statute's general purpose and the extent to which the claimant's right to bring a common-law cause of action is affected should be considered. *Howell*, 143 S.W.3d at 444.

The statute does allow a vexatious litigant to still file lawsuits, but they must first hire an attorney. This would-be plaintiff could potentially file the exact same lawsuit, in substance, the litigant contemplated *pro se*, as the statute merely requires a licensed attorney to first review the pleadings to ensure they are not frivolous. However, hiring an attorney imposes an undesired financial bar.

But there is no need to inform the defendants of the potential lawsuit, as the local administrative judge, no different than the judge granting an *ex parte* order, can appraise *ex parte* whether the lawsuit is frivolous. Likewise, the local administrative judge, no different than an attorney

who might represent the would-be plaintiff, can appraise whether the lawsuit is frivolous.

Beasley has a common-law cognizable right to be able to obtain *ex parte* protective orders and *ex parte* restraining orders, without the financial bar of hiring an attorney. The requirement that Beasley first inform a potential litigant of his actions is unreasonable, and may easily lead to irreparable harm and subject him to physical violence.

Because the Prefiling Order in the Vexatious Litigant statute unreasonably restricts Beasley and a citizen's right to an *ex parte* order, the Prefiling Order is unconstitutional and should be vacated.

XII. PRAYER

Beasley seeks an order: vacating the Prefiling Order as the trial court abused its discretion in finding plaintiff a vexatious litigant, and because the order is unconstitutional. Beasley prays for general relief.

Respectfully

/s/Peter Beasley
Peter Beasley, Plaintiff – Appellant, pro se

Peter Beasley
P.O. Box 831359
Richardson, TX 75083
(972) 365-1170

XIII. CERTIFICATE OF COMPLIANCE

Appellant, Peter Beasley, hereby certifies the word-limited sections of this document contain 3,508 words, per Rule 9.4.

Dated: June 18, 2019

/s/Peter Beasley

Peter Beasley, Plaintiff-Appellant, pro se

Peter Beasley
P.O. Box 831359
Richardson, TX 75083
(972) 365-1170

XIV. CERTIFICATE OF SERVICE

Plaintiff-Appellant, Peter Beasley, hereby certifies that on June 18, 2019, the attached document was served on the Appellees through the court's electronic filing system.

Dated: June 18, 2019

/s/Peter Beasley

Peter Beasley, Plaintiff-Appellant, pro se

Peter Beasley
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Richardson, TX 75083
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XV. APPENDIX

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Tab A

CAUSE NO. DC-18-05278

PETER BEASLEY,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	
	§	DALLAS COUNTY, TEXAS
SOCIETY OF INFORMATION	§	
MANAGEMENT, DALLAS AREA	§	
CHAPTER, et al.,	§	
	§	
Defendant.	§	191st JUDICIAL DISTRICT

ORDER GRANTING DEFENDANTS' MOTION TO
DECLARE PETER BEASLEY A VEXATIOUS LITIGANT

On September 20, 2018, the undersigned heard Defendants' Motion to Declare Peter Beasley a Vexatious Litigant. The Parties appeared through counsel. After considering the motion, the post-hearing briefing from both parties, the evidence presented, and arguments of counsel, the Court finds that the statutory elements are satisfied in all respects and therefore makes the following ORDER.

The Motion to Declare Peter Beasley a Vexatious Litigant is **GRANTED** and the Court declares Peter Beasley a Vexatious Litigant.

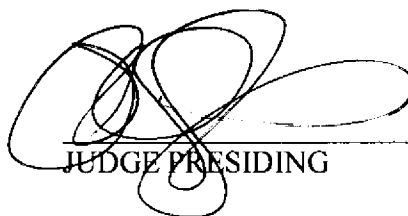
Plaintiff Peter Beasley is required to post bond in the amount of \$422,064.00 with the District Clerk as security per TEX. CIV. PRAC. & REM. CODE § 11.055 within thirty (30) days of this Order. If such security is not timely posted, this case will be dismissed with prejudice per TEX. CIV. PRAC. & REM. CODE § 11.056.

Furthermore, the Court prohibits Plaintiff Peter Beasley from filing any new lawsuits *pro se* in any court in the State of Texas until Plaintiff receives permission from

the appropriate local administrative judge pursuant to sections 11.101 and 11.102 of the TEX. CIV. PRAC. & REM. CODE. Failure to comply with this ORDER shall be punishable by contempt, jail time, and all other lawful means of enforcement. TEX. CIV. PRAC. & REM. CODE § 11.101(b).

It is further ORDERED that the Clerk of the Court provide a copy of this order to the Office of Court administration of the Texas Judicial System within 30 days of entering this order.

SIGNED this 17th day of December, 2018.


JUDGE PRESIDING

Tab B

Cause No. 296-05741-2017

PETER BEASLEY	§	IN THE DISTRICT COURT OF
Plaintiff	§	
	§	
v.	§	COLLIN COUNTY, TEXAS
SOCIETY OF INFORMATION	§	
MANAGEMENT, DALLAS AREA	§	
CHAPTER, JANIS O'BRYAN,	§	296 th JUDICIAL DISTRICT
NELSON BURNS		

PLAINTIFF'S SECOND AMENDED PETITION

Plaintiff, Peter Beasley, (øBeasleyö) files this Second Amended Petition, complaining of Defendants, Society for Information Management, Dallas Area Chapter, Janis O'Bryan, and Nellson Burns, and states:

I. NATURE OF THE CASE

1. This is a contract dispute involving a voluntary professional business association's failure to honor its contract with a member, a member of its board of directors, and its resulting acts to defame and injure plaintiff, for which he seeks monetary damages, declaratory and injunctive relief.

2. Plaintiff also mounts a derivative suit on behalf of SIM Dallas against the individual defendants, Janis O'Bryan and Nellson Burns.

II. PARTIES

3. Plaintiff is Peter Beasley, an individual residing in Dallas County.

4. Defendant, Society for Information Management, Dallas Area Chapter (øSIM Dallasö), is a Texas nonprofit corporation and an Internal Revenue Code §501(c)(6) organization. Defendant operates across the entire North Texas region and has its official business address at P.O. Box 208, Frisco, TX, 75034, in Collin County.

5. Defendant, Janis O'Bryan, (øO'Bryanö), is an individual resident of Dallas County as is the current, past president of SIM.

6. Defendant, Nellson Burns, (øBurnsö), is an individual resident of Dallas County, and is the current president of SIM.

III. DESIGNATIONS

A. Discovery Control Plan

7. Plaintiff intends to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.3.

B. Claim for Relief

8. Plaintiff seeks monetary relief over \$1,000,000, and non-monetary relief.

9. Plaintiff seeks declaratory relief.

10. Plaintiff seeks injunctive relief and imposition of a receiver to take control over the Society of Information Management Texas corporation, to restore its operation to those within the laws of this state.

C. Jurisdiction

11. The Court has subject-matter jurisdiction over the lawsuit because the amount in controversy exceeds this Court's minimum jurisdictional requirements.

12. The Court has personal jurisdiction over defendants

- a. Because the primary defendant is a resident/citizen/business organization formed under the laws of the State of Texas.

D. Mandatory Venue

13. Venue is proper in Collin County under Texas Civil Practice & Remedies Code section 15.002 (3) because, during the time the basis of the suit accrued, defendant's principal office in this state is in Collin County.

14. Venue is mandatory in Collin County in a suit for libel, under Texas Civil Practice & Remedies Code § 15.017 because Collin County is the principal office of the defendant, and plaintiff elects to sue in Collin County.

IV. THE UNDERLYING DISPUTE

15. This lawsuit stems from Beasley, a board member with legal fiduciary duties, to have SIM Dallas operate within its own bylaws, him trying 1) to stop a *substantial* give-away of members' dues to non-members who are friends of the board and 2) to stop the organization's discriminatory membership practices to unfairly exclude minorities, keeping them from advancement opportunities.

V. FACTUAL BACKGROUND

16. Beasley's SIM Membership and Offices Held. Beasley is a member of SIM Dallas and has been a member in good standing of the organization since September 2005. For each of those years, Beasley paid dues to SIM Dallas. Total dues paid by Beasley to SIM were approximately \$5,345.00. Beasley has volunteered hundreds of hours of his time to help SIM thrive. Beasley is also a Director serving on the SIM Dallas Executive Committee, (Board), and is the Membership Committee Chair, (Membership Chair). Beasley was first elected to the Board in November 2012, and reelected in 2013, 2013, and 2014. Beasley was elected for his second annual term as Chair on November 9, 2015, for the 2016 program year.

17. Beasley was the first African-American elected to SIM's Board in its history.

18. Contract Board Agreements. To secure and protect Beasley to serve in a legal, fiduciary role to the SIM Dallas, Beasley and SIM had an agreement beginning January 8, 2013, that SIM Dallas will a) cover Beasley's activities serving on the board under the insurance carried by the SIM organization, b) operate within the bylaws and organizational charter, and c) agreed to supervise Beasley's activities as a board member. In return, Beasley agreed to a) volunteer his time in service of the corporation, b) would resign if he was unable to perform his duties, c) accept the liabilities of being a director of a Texas corporation. In exchange for the insurance protection and contract of responsibilities defined in the bylaws to protect Beasley, he relied on that promise and agreed to take-on the personal financial liability for his actions working as a director of the corporation, and served on the board in 2013, 2014, 2015, and 2016.

19. Control of the SIM Board. The SIM Board has 10 voting members and 5 officers. Under the bylaws, the SIM Dallas Board is led by its CEO, the President. For 2016, the SIM President was Janis O'Bryan (O'Bryan) and its President's elect was Nellson Burns (Burns) the 2017 and 2018 President of SIM Dallas.

20. Beasley's Advocacy to SIM and its Board. In his position as a Director and Membership Committee Chairman, Beasley observed numerous violations by SIM Dallas in following its bylaws. In his first year on the Board, Beasley successfully amended the bylaws to bring SIM into compliance with how it recertified members annually for continued membership. Beasley became staunch in support of following the bylaws within the Board, warning against: a) wasting and hoarding of

hundreds of thousands of dollars in corporate assets; b) allowing non-voting members of the Board to vote; c) constituting a board or directors in contravention of the bylaws, d) the failure of certain Board members to exercise independent professional judgment, rather than simply rubber-stamping the decisions of a few Board members who controlled the Board, e) the President (O'Bryan) appointing an individual to the board (Bouldin) without vote or approval of the board, f) and allowing a husband and wife to serve as members of the board. Beasley advocated appointment of a Parliamentarian, to have officers with access to the corporate funds (in excess of \$400,000) to be bonded, and advocated the organization provide annual financial reports to the members.

21. Waste of SIM's Assets By Board. SIM Dallas is exempt from federal taxes, under IRS regulation 501(c)(6), as a Business League, (not as a 501(c)(3) charity). SIM's purpose as an organization is to further the education and professional support of its members.

22. SIM's Articles of Incorporation and its bylaws both specify the purpose for which the corporation is organized:

The specific purpose and primary purpose is to foster the development of information systems for the improvement of the management performance of its members.

The Articles further provide that "this corporation shall not, except to an insubstantial degree, engage in any powers that are not in furtherance of the primary purpose of this corporation" and that "this corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the primary purpose of this corporation." Article I, Section 2 of SIM's current, September 9, 2013, bylaws lists five (5) activities to benefit members, none of which list the donation of SIM assets to aid others.

23. In spite of the founding documents, O'Bryan, Burns, and others have sought to run the organization as a philanthropic venture, and not a business league. Beasley objected and argued against such donation activity, which is contrary to SIM's organizational articles and its bylaws. Despite Beasley's ongoing objections, O'Bryan rebuffed Beasley, and announced her intention to force through such measures. Furthermore, several Directors have sought approval to use SIM's \$402,188 available in cash assets to fund activities to benefit members, but O'Bryan blocked use of the funds for such proper purposes. Although Beasley attempted to work with other Board members to find a way to resolve the conflict, O'Bryan

refused to meet with or discuss the issues with Beasley. In February 2016, she began making false accusations against Beasley, removing responsibilities from him, and denying him permission to attend, on behalf of SIM, the national leaders' conference.

24. Beasley, with the support of other board members, offer several valid options to resolve the dispute:

- a. Hold transparent "charity events" so that any monies raised for philanthropy would be kept separate and distinct from members' assets, as was recommended by SIM National and other SIM Chapters;
- b. Ask the members to vote-in a level of philanthropy (i.e. 10% of assets); or
- c. Submit a vote to the members to eliminate the bylaw restriction to allow for "substantial" use of funds in ways as voted by the board,

but SIM Dallas would not allow these simple options to resolve the dispute.

25. Discriminatory Membership Practices. Beasley further advocated to the Board about its discriminatory membership practices, which resulted in minorities being under-represented in the SIM membership.

26. Beasley detected and documented a long-standing practice to keep SIM Dallas' membership to primarily consist of White Males only. Into the 2000s, the face of society, the information technology ranks and the people of North Texas have become more diverse. However, SIM Dallas' membership practices of the 2012 to 2016 era disproportionately tried to excluded women, India nationalists, Blacks (African-Americans, Africans), Middle-Easterners and Hispanic applicants.

27. Under Beasley's term serving on and leading Membership, the SIM Dallas membership percentage of White Men dropped noticeably.

28. Challenges to Beasley's membership recommendations mounted month by month in 2015 and 2016, with a stated complaint that Beasley does not "protect the brand". Beasley documented a practice by board members John Cole, Nellson Burns, and Patrick Bouldin, (who all had a business relationship with Nellson Burns), and others, to challenge India, Black, Hispanic, and Female candidates for membership. To ward-off non-voting members of the board from succeeding at discriminatory membership practices, on **March 18, 2016**, Beasley modified his committees' procedures to no longer accept challenges from non-voting members of the board.

29. **SIM Dallas then moved to expel Beasley.**

30. Improper and Void Expulsion of Beasley from SIM. March 2016, Burns, O'Bryan, and the other Officers on the Board, via e-mail exchange, decided to embark upon a campaign to rid SIM of Beasley. SIM invited Beasley to come to a downtown Dallas 8 a.m. meeting on March 24, 2016 (for the purpose of asking Beasley to resign, unknown to Beasley). However, at 6:00 a.m. the day of the scheduled meeting, Beasley received notice that the meeting had been cancelled. The next day, **March 25, 2016**, Beasley was informed via e-mail that SIM would hold a meeting of the Executive Committee on April 4, 2016, at 8:00 a.m. to seek Beasley's expulsion from SIM. No information was provided to Beasley on what he had done to cause his expulsion from membership in SIM.

31. In response to SIM Dallas's attempt to expel Beasley without telling him why or asking first for his resignation of Beasley, March 29, 2016, Beasley sued SIM Dallas and sought and obtained a temporary restraining order in Dallas District Court, prohibiting his expulsion. Rather than meet and resolve the dispute, as Beasley asked to do, SIM Dallas removed the lawsuit to federal court.

32. In direct violation of the then valid Texas TRO, SIM Dallas met anyway on April 4, 2016, to discuss and plan the expulsion of Beasley. Although Beasley was still then a member of the Board, SIM Dallas intentionally excluded him from the meeting.

33. After expiration of the TRO while the lawsuit was in federal court, on April 13, 2016 at 9:17 p.m., Beasley received an e-mail, informing him that SIM Dallas intended to hold a meeting of the Executive Committee on April 19, 2016, at 8:00 a.m. to seek Beasley's expulsion. Again, no information was provided to Beasley on what he had done to cause his expulsion from membership in SIM Dallas. The notice for the meeting was legally improper and invalid because it provided Beasley less than the 7 days' notice required in the bylaws. On April 17, 2016, Beasley objected to the notice on this basis and he further objected to allowing others to attend by phone, as the meeting notice provided no option for attendance by phone. In his objection, he indicated he would attend if 1) he was told the reason he faced expulsion where he could defend his membership rights, and 2) the meeting was rescheduled with proper notice given to potentially be represented by counsel.

34. Despite his objections, on April 19, 2016, Beasley was informed by e-mail that he had been expelled from SIM Dallas. SIM Dallas's minutes from the April 19,

2016, Executive Committee meeting indicated only ten members of the board were present at the meeting, which is not a quorum under SIM Dallas' bylaws and Texas law. Further, SIM Dallas used votes from non-voting members of the board who were illegally attending by phone to pretend they had enough votes to sustain expulsion. Accordingly, for many reasons, Beasley's purported expulsion from SIM Dallas was and is void.

35. After being the first African-American voted to the Board, Beasley became the ONLY member in the Chapter's 34+ year history to ostensibly become expelled **ó of which Beasley vigorously disputes and seeks to overturn.**

36. Due Process Violation. The expulsion further violated Beasley's due process rights in that he was not given adequate notice, was given no notice of the charges to be brought against him, was given no opportunity to prepare a defense or to be represented by counsel. Moreover, the minutes reveal that that O'Bryan and Burns instituted a kangaroo court to try Beasley in absentia. The charges brought were baseless and made in bad faith, and even the minutes prepared by the SIMs counsel indicate that the primary topic of discussion was the conflict over Beasley's insistence that SIM Dallas follow its own rules. The true purpose of O'Bryan and Burns in forcing through Beasley's expulsion was to get him off the Board ó which, under the bylaws the Officers and other board members were without power to do. SIM Dallas acted in extreme bad faith, and the resulting expulsion was arbitrary, capricious, and in violation of the law.

37. Illegally Constituted Board. SIM Dallas' officer's illegal action to attempt to remove Beasley from the board has led to all subsequent boards to be illegally constituted. The process to elect a new Executive Committee (board), per the bylaws, requires a vote of the current board to approve the following year's board. However, SIM Dallas has refused to allow Beasley his vote, and therefore any resulting board is illegally constituted.

38. Beasley Remains a Member of the Board. Beasley was elected to the Board by the members, and under the bylaws, only members have the exclusive power to remove a board member, and Texas law holds that Beasley's term of office extends from when he was elected, until the director's successor is elected. Tex. Bus. Org. Code § 21.407. As all subsequent boards have been illegally constituted, Beasley remains an elected member of the board ó and has standing under Texas law (as a member and board member) to challenge the ultra-vires acts of SIM Dallas and its

officers or directors from when Beasley was and continues to be acting in the best interest of SIM Dallas. Tex. Bus. Org. Code §§ 20.002(c)(1); 21.522(1)(A).

39. Breach of Contract. Beasley was but a volunteer, providing his time for years in support of the organization. By agreement, at worse, if for some reason Beasley could not fulfill his duties, SIM Dallas had agreed to ask for his resignation, and he had agreed to resign. But instead of giving Beasley the professional courtesy offered to most elected officials and abide by its agreement, SIM Dallas did not ask for Beasley's resignation, but instead sought to defame and expel Beasley.

40. Illegal Distribution of Member Assets to Member, Peter Vogel. Rather than simply resolve the dispute, SIM Dallas, controlled by Burns and O'Bryan, wasted the assets of the organization by mounting an unconscionable legal defense, wasting over \$422,000, in mounting and continuing legal fees. Their legal actions, to cover up their own personal faults, included filing completely groundless, frivolous pleadings, having 2 and 3 lawyers needlessly attend depositions, and wasting court resources by removing the lawsuit to federal court, for it only to be remanded back to state court.

41. SIM Dallas relies on attorney Peter Vogel for legal services; however Peter Vogel is a member of the organization, therefore with a personal interest in the outcome of the case. February 27, 2016, plaintiff asked for Mr. Vogel's voluntary withdrawal of the case, but he refused.

42. Further, attorney Peter Vogel claims he can represent the organization, represent all of its members, represent Peter Beasley, and represent himself all within the same lawsuit which have conflicting interests, which violate his professional responsibilities as an attorney. Attorney Peter Vogel has represented one faction of the board, against another, which violates his professional responsibilities as an attorney. He has failed in his obligation to ensure that the Texas corporation operates within its governing documents.

43. SIM Dallas, with the advice of attorney Peter Vogel, refused at every juncture offered by Beasley to meet to try and resolve the dispute. In February and March 2016, Beasley asked to meet with O'Bryan to clear the air and resolve the dispute, but she failed to meet. March 24, 2016, Beasley offered to meet to resolve the dispute, but SIM Dallas, via e-mail by Peter Vogel, refused to meet. April 4, 2016, Beasley asked board member Kevin Christ to inquire if SIM Dallas would meet to resolve the dispute, but they refused. And in Dallas District Court, the trial judge

ordered the parties to mediation by October 6, 2017, but SIM Dallas would not make themselves available to meet.

44. To stop the mounting legal fees, on both sides, Beasley nonsuited his lawsuit, *without prejudice*, on October 5, 2017, as no counter-claims were pending against him. But after the Dallas court dismissed the case, SIM Dallas, pursued a completely void award of \$211,031 against Beasley, forcing again more legal action in appellate court.

45. Peter Vogel, him being a member, advising SIM Dallas into an unreasonable course of litigation, leads to an illegal violation of Texas law, with SIM Dallas transferring member's assets to one of its members. Tex. Bus. Code § 22.054 (1), with the potential to lead the Chapter into insolvency. Beasley seeks to have the attorney client relationship, if it actually exists, with member Peter Vogel, enjoined. Tex. Bus. Code § 20.002 (d).

46. Defamation and Tortuous Interference. Rather than resolve the dispute, SIM Dallas embarked on a campaign to defame and disparage Beasley and his software company, Netwatch Solutions, and to tortuously interfere with business and contractual arrangements. Specific acts of defamation to 3rd parties, without privilege, occurred on April 19, 2016; May 8, 2016; October 25, 2016; December 29, 2016; December 31, 2016; February 1, 2017, February 6, 2017; April 6, 2017; August 29, 2017, December 15, 2017, **February 5, 2018**, and at other times in meetings and publications to 3rd parties.

47. SIM Dallas has refused since February 2016 to the date of filing this amendment (February 22, 2018) to meet to mediate or try and resolve the dispute.

48. The damages caused by SIM Dallas are on-going and continue to mount now well past the \$1,000,000 mark.

49. Legal fees claimed or owed now are crossing beyond \$900,000.

50. Beasley attempted to stop the mounting legal fees and damages with a nonsuit, but SIM Dallas keeps the dispute going ó now with attorneys, like OøBryan and Burns, keeping the fight going to hide their own wrongdoing and malfeasance.

51. Burns and OøBryan are not acting in the best interest of SIM Dallas in authorizing over \$500,000 in legal fees and a litigation strategy to cost millions in damages to innocent customers, employees and IT professionals across North Texas.

52. SIM Dallas, and its illegally constituted Board and errant leadership under Burns and O'Bryan systematically violate the laws of this State, its own bylaws, and are in effect stealing the funds of the Texas non-profit corporation for personal gain.

53. O'Bryan and Burns could easily have convened a meeting of the members in April 2016, either to attempt to remove Beasley from the Board (although no grounds for removal existed), or could have amended the Articles of Incorporation or Bylaws, or direct the Board to stop its discriminatory membership practices so as to remove the source of the underlying conflict ó 1) the substantial give away of member's assets to non-members in the name of philanthropy and 2) its discriminatory membership practices.

54. However, O'Bryan and Burns did not do so. As the Board does not have the power to remove one of its own, they moved, at Burns's behest, to expel Beasley as a member. However, a membership in SIM is not a prerequisite for Board membership. Therefore, Beasley remained a member of the Board. Nevertheless, O'Bryan and Burns caused the Board to ignore his membership, refused to invite him to meetings, and took the illegal position that Beasley had effectively been removed from the Board.

55. SIM Dallas went as far as to pay for and bring an armed peace officer to the next Board meeting to ensure Beasley remained excluded.

56. Malice. SIM Dallas acted with malice, with a specific intent to hurt Beasley, with an admission to "not be nice" and to hurt Beasley in his name, and through his company. As malice, SIM Dallas simply breached a sponsorship contract with Beasley's company, and refused to refund the sponsorship fee.

57. SIM's malice toward Beasley began in 2016 and extends into 2018, with SIM stooping so low as to meet with employees of Beasley's company, Netwatch Solutions, to undermine Beasley and his company's ability to generate revenue and service its customers.

VI. CAUSES OF ACTION

A. Count 1 – Breach of Contract Against SIM Dallas

58. The Board Agreement, bylaws of the corporation, and oral representations formed a valid contract between Beasley and SIM Dallas. SIM Dallas offered that Beasley serve on the SIM board of directors, at his own personal liability to do so.

Beasley accepted that offer and served on the board in 2013, 2014, 2015, and 2016. SIM Dallas breached that agreement a) when the President felt Beasley was not fulfilling his duties, but failed to ask for Beasley's resignation, b) failing to follow its bylaws with respect to Beasley, b) and when a legal dispute occurred, failed to cover Beasley's legal expenses in support of the organization with SIM Dallas's insurance carrier. Beasley relied on that agreement, served as a member of the board, and acted in the best interest of the organization with the knowledge that his resignation would be requested if he was not fulfilling his duties, and that his actions to protect the members would be covered by insurance. As a result of SIM Dallas's breach, Beasley has incurred damages.

59. Beasley requests the Court to award him his costs and reasonable and necessary attorney's fees, both for trial as well as for successful defense of any appeals.

B. Count 2 – Fraudulent Inducement Against SIM Dallas

60. Or in the alternative to Count 1, SIM Dallas induced Beasley to serve on the board with the false representation that he would be asked to resign if his performance was improper, and that his actions on behalf of the organization were covered under SIM Dallas's insurance. The representations by SIM Dallas were false, and SIM Dallas knew the statements were false, or made the false statements without any knowledge of its truth. SIM Dallas made these false statements with the intent that Beasley act upon the false assertions, and Beasley acted in reliance of those false statements. Beasley suffered damages.

61. Beasley requests the Court to award him his costs and reasonable and necessary attorney's fees, both for trial as well as for successful defense of any appeals.

C. Count 3 – Breach of Contract Against SIM Dallas

62. Peter Beasley paid his membership dues for the 2016 calendar year, but after April 19, 2016, SIM Dallas breached its contract and no longer allowed Beasley to enjoy his benefits of membership.

63. Beasley requests the Court to award him his costs and reasonable and necessary attorney's fees, both for trial as well as for successful defense of any appeals.

D. Count 4 – Injunction Against Ultra Vires Acts of SIM

64. Plaintiff asserts a derivative claim on behalf SIM. Plaintiff is a member of SIM with standing to assert such a claim both because his expulsion was illegal and ultra vires and because the purported loss of his membership was involuntary and without a valid organizational purpose and for the purpose of defeating these claims.

65. As pleaded herein, plaintiff has presented these claims to SIM, and SIM refuses to grant redress.

66. Defendant owes duties to SIM Dallas of good faith and due care and to act in the best interests of SIM and its members. Defendant also owes duties of obedience to act in conformity with the organizational documents and law. Defendant has failed to act in good faith, with reasonable care, and in the best interests of SIM Dallas and its members.

- a. Injunction ó Appoint a Receiver. Due to SIM Dallas, as controlled by Burns and OøBryan, is unwilling to operate within its bylaws and the laws of this state, and due to it acting in a way to destroy the corporation, Plaintiff seeks the appointment of a receiver, at SIM Dallasø expense, to restore the organization to operate within its bylaws. Further, SIM Dallas, under its current leader, Nellson Burns, is engaging in a litigation defense strategy to defend against his own personal motives, at the expense of the organization, and therefore Plaintiff seeks the appointment of a receiver, at SIM Dallasø expense, to restore the organization to operate within its bylaws.
- b. Injunction ó Reinstate Membership and Board Position. The expulsion of plaintiff from membership in SIM Dallas and his removal from the board, as elected by the members, was in violation of the bylaws of SIM Dallas, and implied due process rights and was taken without authority and without a valid organizational purpose. The expulsion and removal is void and ultra vires. Therefore, pursuant to §20.002 of the Texas Business Organizations Code, plaintiff seeks injunctive relief voiding the ultra vires expulsion, and removal, and reinstating his membership, effective as of the date of the purported expulsion. Plaintiff is without adequate remedy at law.

- c. Injunction to Stop Illegal Distribution of Assets to a Member. The contract, if one exists, to obtain services from member Peter Vogel is unreasonable and violates the Texas Business Organizations Code prohibition to not provide dividends to a member. Therefore, plaintiff seeks injunctive relief voiding the ultra vires distribution of member assets to a member.

67. Therefore, plaintiff requests that this Court enter a permanent injunction prohibiting further violations of SIM Dallas's bylaws and charter. Plaintiff is without adequate remedy at law.

E. Count 5 – Defamation Against SIM Dallas

68. On December 31, 2016, and at other times, SIM Dallas published a statement, and that statement was defamatory concerning Beasley. SIM Dallas acted with malice, and was negligent in determining the truth of the statement. Beasley suffered damages.

69. February 12, 2017, and August 1, 2017, Beasley put SIM Dallas on notice that their false statements were defamatory, and SIM Dallas has refused, in writing on August 18, 2017, to retract the false statements.

70. SIM Dallas's actions, through its attorney agents, were willful, malicious, unjustified, and specifically intended to cause harm to Beasley. Therefore, Beasley is entitled to recover punitive damages from SIM Dallas in an amount to be determined at trial.

F. Count 6 – Declaratory Judgment

71. A live controversy exists among the parties to this dispute with respect to rights, status, and other legal relations, and Plaintiff requests this Court to issue a declaratory judgment pursuant to Tex. Civ. Prac. & Rem. Code §§ 37.001 et seq.

- a. Declaratory Relief to Expulsion of Beasley Void. Beasley states that he is a person interested under a written contract or other writings constituting a contract, or a person whose rights, status or other legal relations are affected by a statute or contract, and Beasley seeks a declaration of his rights, status, or other legal relations thereunder. In particular, Beasley seeks a declaratory judgment that the April 19, 2016, meeting of the Executive Committee of the SIM violated SIM's bylaws, violated due process protections under the Texas Constitution and

violated applicable provisions of the Texas Business Organizations Code, such that Beasley's purported expulsion was void and of no effect and that his status as both a Board member and a member of SIM were and are unaffected.

- b. Declaratory Relief ó Illegally Constituted Board. Beasley states that he is a person interested under a written contract or other writings constituting a contract, or a person whose rights, status or other legal relations are affected by a statute or contract, and Beasley seeks a declaration of his rights, status, or other legal relations thereunder. In particular, under the bylaws, all subsequent boards are allowed by approval and vote of the prior board. SIM Dallas failed to allow Beasley to vote on the 2017 and 2018 boards, and therefore those subsequent boards are illegally constituted, and the 2016 board remains the valid board.
- c. Declaratory Relief ó Actions of Board Subsequent to Beasley's Purported Expulsion are Also Void. Beasley states that he is a person interested under a written contract or other writings constituting a contract, or a person whose rights, status or other legal relations are affected by a statute or contract, and Beasley seeks a declaration of his rights, status, or other legal relations thereunder. After the purported expulsion, Beasley informed SIM that the proceedings were void and that he was still entitled under Texas law to notice of all board meetings, and for the right to attend and vote on the matters of the corporation. SIM ignored this demand and continued and continues to operate in violation of state law by refusing to provide Beasley notice and the opportunity to attend Board meetings and vote on Board business. Beasley seeks a declaratory judgment that all actions of SIM's Board which required a vote since April 19, 2016, were and are void ó unless subsequently ratified by Beasley.
- d. Declaratory Relief ó Beasley Remains an Elected Board Member. Beasley states that he is a person interested under a written contract or other writings constituting a contract, or a person whose rights, status or other legal relations are affected by a statute or contract, and Beasley seeks a declaration of his rights, status, or other legal relations thereunder. In particular, and in violation of the bylaws, Beasley was never removed, by vote of the members, as a board member, with that

ballot being allowed by the 2016 board on which he served. Under state law, directors serve for their term until another valid election occurs, and since no valid election has since occurred, Beasley seeks a declaration that he remains a member of the elected board.

- e. Declaratory Relief ó Board's Attempt to Donate and Give Away SIM's Assets Violates SIM's Bylaws and Organizational Articles. Beasley states that he is a person interested under a written contract or other writings constituting a contract, or a person whose rights, status or other legal relations are affected by a statute or contract, and Beasley seeks a declaration of his rights, status, or other legal relations thereunder. Certain members of SIM's Board have embarked upon a charitable or philanthropic plan simply to donate or give away SIM's cash, in significant amounts, to non-members. Beasley seeks a declaratory judgment that SIM's bylaws and articles of incorporation prohibit such charitable donations of SIM's assets to benefit non-members.

72. Attorney's Fees. Pursuant to Tex. Civ. Prac. & Rem. Code § 37.009, Beasley requests the Court to award him his costs and reasonable and necessary attorney's fees, both for trial as well as for successful defense of any appeals.

G. Count 7 – Violation of Beasley's Due Process Rights Against Defendant SIM

73. As a member of SIM, plaintiff is entitled to due process rights prior to expulsion, including a meaningful right to be confronted with the grounds of his expulsion, the right to be heard, the right to counsel, and protection against decisions that are arbitrary and capricious or tainted by fraud, oppression, and unfairness. As alleged herein, plaintiff was denied his due process rights.

74. Plaintiff is also entitled to a procedure that scrupulously abides by the organization's internal bylaws and rules. The notice for the Board meeting to expel Beasley was sent less than seven days prior to the date of the meeting in violation of the Bylaws. Furthermore, the meeting was illegally constituted because almost half the participants attending by telephone. The notice of the meeting did not provide for attendance by phone, and Beasley was not given the opportunity to attend by telephone. Moreover, the meeting was in violation of Tex. Bus. Orgs. Code § 22.002 because Beasley did not consent to the meeting to the meeting being conducted

telephonically. Furthermore, the members physically present did not constitute a quorum.

75. The bylaws and organic documents of a voluntary association constitute a contract between the association and its members. Plaintiff's due process rights are both explicit provisions of this contract and terms implied by law. By the acts and omissions alleged herein, SIM has breached its contractual duties to plaintiff. Plaintiff has performed his obligations and has been damaged by the breach.

76. Therefore, plaintiff is entitled to a mandatory injunction voiding the expulsion and reinstating his membership and to actual damages resulting from the breach. Plaintiff is without adequate remedy at law.

77. Plaintiff is further entitled to an award of reasonable and necessary attorney's fees incurred in this action on a written contract.

H. Count 8 – Tortious Interference with Contractual Relationships, Against Defendant SIM Dallas

78. Beasley had a contractual relationship May 2016, with the law firm of Ferguson, Braswell, Fraser, and Kubasta.

79. On May 8, 2016, SIM Dallas, through its agent Robert Bragalone, committed the underlying tort of defamation to interfere with an existing legal representation contract. Robert Bragalone, without regard for the truth, made false statements with the expressed, written intent to interfere with Beasley's contract for legal representation.

80. Beasley suffered damages, for which he sues.

81. SIM Dallas's actions, through its attorney agents, were willful, malicious, unjustified, and specifically intended to cause harm to Netwatch and its owner and chief executive officer, Beasley. Therefore, Beasley is entitled to recover punitive damages from SIM Dallas in an amount to be determined at trial.

I. Count 9 – Tortious Interference with Contractual Relationships, Against Defendant SIM Dallas

82. Beasley had a contractual relationship August 2016, with the law firm of White and Wiggans.

83. On October 25, 2016, SIM Dallas, through its agent Robert Bragalone, committed the underlying tort of defamation to interfere with an existing legal

representation contract. Robert Bragalone, without regard for the truth, made false statements with the expressed, written intent to interfere with Beasley's contract for legal representation.

84. Beasley suffered damages, for which he sues.

85. SIM Dallas's actions, through its attorney agents, were willful, malicious, unjustified, and specifically intended to cause harm to Netwatch and its owner and chief executive officer, Beasley. Therefore, Beasley is entitled to recover punitive damages from SIM Dallas in an amount to be determined at trial.

J. Count 10 – Tortious Interference with Contractual Relationships, Against Defendant SIM Dallas

86. Beasley had a contractual relationship August 2016, with the law firm of Dan Jones.

87. On December 29, 2016, SIM Dallas, through its agent Soña Garcia, committed the underlying tort of defamation to interfere with an existing legal representation contract. Soña Garcia, without regard for the truth, made false statements with the expressed, written intent to interfere with Beasley's contract for legal representation.

88. Beasley suffered damages, for which he sues.

89. SIM Dallas's actions, through its attorney agents, were willful, malicious, unjustified, and specifically intended to cause harm to Netwatch and its owner and chief executive officer, Beasley. Therefore, Beasley is entitled to recover punitive damages from SIM Dallas in an amount to be determined at trial.

K. Count 11 – Tortious Interference with Contractual Relationships Against Defendants SIM Dallas and Nellson Burns

90. From October 2014 through March 2016, Peter Beasley, through the company he owned 100%, Beasley, had an ongoing contractual and business relationship with Holly Frontier Corporation (HFC), the employer of Nellson Burns, by virtue of his personal building access badge and network login account to HFC's computer network.

91. Based on the dispute within SIM about their bylaws, Burns, acting solely in bad faith, with animosity toward Beasley, outside the scope of his legitimate duties as an officer of HFC, and in furtherance of SIM's desire and intent to punish Beasley

for his opposition to the SIM Board's improper use of organizational funds, interfered with the contract and business relationship between Beasley / Netwatch and HFC, caused HFC to shut down Beasley's access to HFC's computer system, and caused HFC's employees not to communicate with Beasley.

92. October 2017, HFC ultimately terminated Nellson Burns as their Chief Information Officer for his interference and for embroiling them in this fight.

93. As a direct and proximate result of Burns's wrongful and tortious interference with the contractual and business relationship between Netwatch and HFC, Beasley has sustained actual damages in an amount to be determined at trial.

94. Burns's actions, individually and as an agent of SIM Dallas were willful, malicious, unjustified, and specifically intended to cause harm to Netwatch and its owner and chief executive officer, Beasley. Therefore, Beasley is entitled to recover punitive damages from SIM Dallas and Burns in an amount to be determined at trial.

L. Count 12 – Business Disparagement Against Defendants SIM

95. As 100% owner of Netwatch Solutions Inc., Beasley has standing to bring forward a business disparagement claim without the formal intervention of Netwatch Solutions Inc.

96. From March 2016, to the present, SIM Dallas has published disparaging words about Netwatch's economic interests.

97. The disparaging words were false or in some instances false by implication or innuendo.

98. SIM Dallas published the false and disparaging words with malice.

99. SIM Dallas published the words without privilege and had a requisite degree of fault.

100. As a direct and proximate result of SIM Dallas's disparagement, Netwatch has incurred general damages to its reputation and special damages in the form of lost revenue and profits from its relationship with HFC, lost business opportunities with SIM members, lost profits, and a diminution in the value of Netwatch as a going concern. Netwatch has incurred losses in expenses incurred trying to restore Netwatch's reputation.

101. SIM Dallas's actions were willful, malicious, unjustified, and specifically intended to cause harm to Netwatch and Beasley. Therefore, Beasley is entitled to recover punitive damages from SIM Dallas in an amount to be determined at trial.

M. Count 13 – Breach of Duties/Ultra Vires Acts Against Defendants Burns and O'Bryan

102. Plaintiff asserts a derivative claim on behalf SIM Dallas. Plaintiff is a member of SIM with standing to assert such a claim both because his expulsion was illegal and ultra vires and because the purported loss of his membership was involuntary and without a valid organizational purpose and for the purpose of defeating these claims.

103. As pleaded herein, plaintiff has presented these claims to SIM Dallas, and SIM Dallas refuses to grant redress. Furthermore, any other demand would be futile because SIM Dallas is controlled by O'Bryan and Burns.

104. Defendants Burns and O'Bryan owe duties to SIM of good faith and due care and to act in the best interests of SIM Dallas and its members. Defendants also owe duties of obedience to act in conformity with the organizational documents and law. Defendants have failed to act in good faith, with reasonable care, and in the best interests of SIM and its members.

105. Therefore, plaintiff requests that this Court enter a permanent injunction prohibiting further violations of SIM's bylaws and charter against Burns and O'Bryan and award actual damages 1) in at least the amount of membership funds wrongfully distributed to non-members, 2) any funds wrongfully distributed to attorney Peter Vogel, 3) any SIM Dallas funds paid in the individual defense of the lawsuit between Nellson Burns and Netwatch Solutions, 4) and all costs and attorney's fees incurred by SIM Dallas in the defense of the ultra vires and illegal actions of SIM Dallas which Nellson Burns and Janis O'Bryan pursued. Plaintiff is without adequate remedy at law.

106. Plaintiff further requests that SIM Dallas be awarded its attorney's fees incurred in this derivative action pursuant to Tex. Civ. Prac. & Rem. Code § 38.001 because the Articles and Bylaws constitute a contract among the corporation and its members, and Burns and O'Bryan have breached that contract by their actions alleged herein. Plaintiff requests under the principles of equity that any attorney's fees awarded be distributed to him personally to avoid unjust enrichment and because this action has conferred a substantial benefit on the corporation.

VII. ATTORNEY FEES

107. Plaintiff seeks to recover attorney fees as authorized under declaratory judgment, fraud, and breach of contract statutes.

VIII. CONDITIONS PRECEDENT

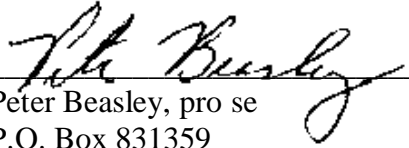
108. All conditions precedent to plaintiff's claim for relief have been performed or have occurred.

IX. CONCLUSION AND PRAYER

109. For these reasons, plaintiff asks that the Court issue citation for defendant to appear and answer, and that plaintiff be awarded a judgment against defendant for the following:

- a. Actual damages.
- b. Declaratory Judgment.
- c. Injunctive Relief.
- d. Appointment of a Receiver.
- e. Prejudgment and postjudgment interest.
- f. Court costs.
- g. Attorney's fees and costs as are equitable and just.
- h. All other relief to which plaintiff is entitled.

Respectfully submitted,


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Tab C

DENY and Opinion Filed May 15, 2019.



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-19-00422-CV

IN RE PETER BEASLEY, Relator

**Original Proceeding from the 191st Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-18-05278**

MEMORANDUM OPINION

**Before Justices Myers, Molberg, and Nowell
Opinion by Justice Molberg**

In this original proceeding, relator complains of the trial court's December 11, 2018 order granting a motion to declare relator a vexatious litigant. In the order, the trial court granted the motion, declared relator a vexatious litigant, ordered relator to post a \$422,064.00 bond as security pursuant to section 11.055 of the civil practice and remedies code, and ordered that the case be dismissed with prejudice if relator failed to post the bond within thirty days of the December 11 order pursuant to section 11.056 of the civil practice and remedies code. The order also prohibits relator from filing any new, pro se lawsuits in Texas without first receiving permission from the appropriate local administrative judge pursuant to section 11.101 and 11.102 of the civil practice and remedies code. Relator seeks a writ of mandamus directing the trial court to vacate the December 11 order.

Mandamus is an “extraordinary remedy, not issued as a matter of right, but at the discretion of the court.” *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 138 (Tex. 2004) (orig. proceeding). It is a means for correcting blatant injustice that will otherwise escape appellate review. *In re Reece*, 341 S.W.3d 360, 374 (Tex. 2011) (orig. proceeding). A relator seeking relief by mandamus has the burden of establishing the trial court clearly abused its discretion and he has no adequate remedy by appeal. *In re Prudential*, 148 S.W.3d at 135–36. “An appellate remedy is ‘adequate’ when any benefits to mandamus review are outweighed by the detriments.” *Id.* at 136.

Based on the record before us, we conclude relator has not shown he is entitled to the relief requested because he has an adequate remedy by appeal. Relator had a right to appeal the portion of the order requiring relator to obtain permission to file new lawsuits in Texas because pre-filing orders are subject to interlocutory appeal. TEX. CIV. PRAC. & REM. CODE ANN. § 11.101(c); *Nunu v. Risk*, 567 S.W.3d 462, 466–67 (Tex. App.—Houston [14th Dist.] 2019, Rule 53.7(f) motion granted) (collecting cases and concluding section 11.101(c) authorizes an interlocutory appeal of a pre-filing order). As for the portion of the order declaring relator a vexatious litigant and requiring him to post a bond, relator has not shown why an appeal of that order provides an inadequate remedy. *See In re Balistreri-Amrhein*, No. 05-18-00633-CV, 2018 WL 2773263, at *1 (Tex. App.—Dallas June 11, 2018, orig. proceeding) (denying petition seeking vacatur of order declaring relator vexatious litigant because record was incomplete and relator had an adequate remedy by appeal) (citing *In re Jackson*, No. 07-15-00429-CV, 2015 WL 8781272, at *1 (Tex. App.—Amarillo Dec. 11, 2015, orig. proceeding) (mem. op.) (mandamus denied because relator had adequate remedy by appeal where vexatious litigant order would not render upcoming trial null or wasteful and order would not evade appellate review)). Accordingly, we deny relator’s

petition for writ of mandamus. *See* TEX. R. APP. P. 52.8(a) (the court must deny the petition if the court determines relator is not entitled to the relief sought).

/Ken Molberg/

KEN MOLBERG
JUSTICE

190422F.P05

Tab D

4. However, Mr. Beasley is not a lawyer. He does not have a formal legal education and, quite admittedly, he has faced monumental adversity in a few legal proceedings when faced with abusive opposing counsel who tell lies and who shirk their professional responsibilities.

MOTION FOR SANCTIONS

5. Defendant's vexatious litigant motion is groundless, non-timely, barred for many reasons, and presented solely for the purpose of a delay, for which sanctions should lie. Tex. R. Civ. P. 13.

6. In particular, **Defendant's 1st and 2nd Supplemental Motions are utterly groundless.**

7. Defendants filed their motion on April 19, 2018, that being 93 days after filing an Answer, and set the motion for a hearing on July 19, 2018; **over 90 days later** – imposing an automatic stay in the proceedings, for no other purpose but for an impermissible delay to avoid discovery.

8. In violation of Rule 88, Defendants sought to prevent answering Plaintiff's discovery requests by filing a Motion for a Protective Order on February 16, 2018 – requesting the court:

“issue an order protecting Defendants from discovery while **Defendants' Motion to Transfer Venue is pending.**”

9. The motion to transfer venue was decided on April 18, 2018 – which eliminated defendant's grounds for protection. So, on April 19, Defendants filed a groundless “vexatious litigant” motion — to further seek an improper resistance to discovery.

10. In keeping with their obstructionist tactics to further avoid discovery, now violating both the civil rules of procedure¹ and criminal laws² of this state, defendants have also ignored Beasley, as a private citizen's requests for records of a Texas non-profit corporation under the Non-Profit Corporation Act. Tex. Bus. Org. Code § 22.353.

¹ Discovery shall not be abated or otherwise affected by pendency of a motion to transfer venue. Tex. R. Civ. P. 88.

² Misdemeanor to refuse to provide requested records. Tex. Bus. Org. Code § 22.354.

11. **The Society of Information Management will one day have to answer for their bad acts, in this forum or under scrutiny by the media.**

12. Defendants and their counsel, as listed contemporaneously in this document, use intentionally false legal arguments, proffer false facts, and take impermissibly inconsistent legal positions to perpetrate their improper delay in the discovery process.

13. Defendants and their counsel should be sanctioned. Tex. R. Civ. P. 13; 215.2(b).

REQUEST FOR FINDINGS OF FACTS AND CONCLUSIONS OF LAW

14. The vexatious litigant statute provides a careful balancing of rights of the individual against the rights of the public. As such, the specifics of the statute must be specifically followed, and courts are required to make evidentiary findings of fact to uphold any judgment of vexation. *Willms v. Americas Tire Co.*, 190 S.W.3d 796, 801 (Tex. App.-Dallas 2006, pet. denied).

15. Plaintiff requests findings of facts and conclusions of law pursuant to Rule 296.

16. If defendant's motion were to be upheld, plaintiff requests specific findings of fact that:

- a. Defendant's January 16, 2018, Motion to Transfer Venue was an Answer to the foregoing lawsuit.
- b. Defendant's April 19, 2018, vexatious litigant motion was filed beyond the 90-day limit provided by statute.
- c. Defendants paid plaintiff's filing fee required by the Dallas District Clerk to institute the lawsuit against the defendant in Dallas District Court.
- d. Defendants provided no conclusive evidence that Beasley had no probability to prevail on all of his claims in this lawsuit.

- e. State which grounds under the vexatious litigant statute the court found as meeting the requisite criteria.

17. If defendant's motion were to be denied, plaintiff requests specific findings of fact that:

- a. Defendant's alleged grounds under C.P.R.C. § 11.054(1) in ¶ B, page 17, in their April 19, 2018 motion, filed by their counsel, rely on false facts and false legal arguments.
- b. Defendant's alleged grounds under C.P.R.C. § 11.054(2) in ¶ C, page 19, in their April 19, 2018 motion rely on false facts and false legal arguments.
- c. Defendant's April 19, 2018, vexatious litigant motion filed by their counsel, was groundless, for the purpose of delay.
- d. Defendant's May 14, 2018 added supportive facts in their 1st Supplement to the vexatious litigant motion filed by their counsel, were irrelevant and groundless.
- e. Defendant's July 5, 2018 added supportive facts in their 2nd Supplement to the vexatious litigant motion, filed by their counsel, were irrelevant and groundless.
- f. Defendant's and their counsel filed their vexatious litigant motion and supplements for the purpose of delay.

DEFENDANT’S VEXATIOUS LITIGANT MOTION IS GROUNDLESS

Introduction

18. Defendant’s motion is not timely filed – filed after the 90-day deadline.
19. Defendant’s motion is estopped by their own arguments and inconsistent actions.
20. Defendant’s motion is groundless as they have sued the Plaintiff, making him a defendant.
21. There are no grounds to find plaintiff vexatious.
 - a. Defendants cannot show there is no probability Beasley can prevail.
 - b. CPCr § 11.054 (1) fails.
 - c. CPCr § 11.054 (2) fails too.
22. Defendants unconstitutionally attempt to use the vexatious litigant statute against Beasley to summarily dismiss his lawsuit.
23. Opposing counsel have no authority to defend this lawsuit nor to bring this claim.

The Motion is Not Timely Filed

24. When answering a lawsuit, a defendant may make a special or general appearance. Rule 120a defines a “special appearance” and Rule 85 defines the contents of an “answer”.
25. By rule, defendants answered the lawsuit by making a general appearance on January 16, 2018, by filing a motion to transfer venue. Tex. R. Civ. P. 85.
26. The vexatious litigant statute defines, “On or before the 90th day after the date the defendant files the original answer or makes a special appearance”, a defendant may file a motion to declare a plaintiff as vexatious. Tex. Civ. Prac. & Rem. Code § 11.051.
27. Defendant’s January 16, 2018, motion to transfer venue was an answer making April 16, the deadline after which defendants could no longer file vexatious litigant motions. *Id.*

28. In result, Defendant's April 19, 2018, vexatious litigant motion was not timely, it being filed 93 days after their answer, *See, Spiller v. Spiller*, 21 S.W.3d 451, 454 (Tex.App.-San Antonio 2000, no pet.) (holding section 11.051 motion filed outside ninety-day period was untimely), where nothing implies that a defendant must first "answer". *See, Brown v. Tex. State Bd. of Nurse Examiners*, No. 03-05-00508-CV, 2007 WL 3034321 (Tex. App.-Austin, Oct. 18, 2007, pet. denied).

29. Defendant's April 19, motion was too late.

30. These defendants should also not garner any sympathy for being late.

31. In June 2016, defendants tried unsuccessfully to "declare" plaintiff as vexatious, but withdrew the motion before the court ruled against them in a hearing, with lead counsel Bragalone saying:

MR. BRAGALONE: And Judge, we do have a problem with the vexatious litigant statute. I argued this earlier. I know it's not terribly relevant, but if you'll just allow me to remind you. You can't discover that you're defending a Peter Beasley in 90 days. And there's a flaw in the statute. But we had to withdraw because we didn't get the motion on file --

32. Now, defendants cannot complain about being late – where they could have filed the vexatious litigant motion on "Day One" of being sued in Collin County. Instead, in a fashion that defendants believe ONLY JUDGE MOORE WOULD GRANT THEIR MOTION, they did not bring the claim to Judge Wheless, Judge Roach, or to Judge Goldstein.

33. The motion is not timely and should be denied.

34. Further, defendants and their counsel know the motion is late – as they tried once before getting around not bringing a timely motion. Defendant's claim is barred by their own arguments. Their motion is not timely filed.

35. Further, the untimely motion was filed solely for a delay and to avoid the discovery process. Sanctions should lie against them. Tex. R. Civ. P. 13.

Defendants are Estopped from Bringing the Claim

36. Even if the motion were timely filed, defendant's claim is estopped by defendants paying plaintiff's transfer fee (in Collin County) and paying plaintiff's filing fees (in Dallas County), where they cannot now complain of being sued vexatiously. A party is estopped from complaining of error in the trial court when the error occurred at the party's request. *See Shafer v. Bedard*, 761 S.W.2d 126, 129 (Tex.App.— Dallas 1988, orig. proceeding). All but for defendant's consent, them paying the transfer and filing fees they now find themselves sued in Dallas County.

37. Defendant's vexatious litigant claim is barred by the doctrine of consent.

38. Defendant's vexatious litigant claim is further barred by the doctrine of laches. Based on defendant's delay and choice to litigate various issues in Collin County, and not immediately file the vexatious litigant motion, plaintiff did not file a motion for summary judgment to defeat the counter-claim nor to advance his claims.

Defendants have Sued Plaintiff; There is No Such Thing as a Vexatious Defendant

39. A careful examination and hearing will show that Defendants (and their counsel) are the protagonists of this dispute – not the plaintiff.

40. Before the case was ordered transferred to Dallas County, no defendant while the action was in Collin County moved to find Beasley a vexatious litigant. Also while in Collin County, defendant Nellson Burns counter-sued Beasley, making Beasley a counter-defendant.

41. But Beasley did not pay the transfer fee or pay to refile his lawsuit in Dallas County. **Beasley did not file this lawsuit in Dallas County, defendants did.** Beasley has not set any hearings in Dallas County “to maintain” this lawsuit, other than to ensure he has a fair tribunal to

determine the vexatious litigant motion. He has not pursued any discovery, sought to compel discovery, or to seek any orders of the court.

42. **Although Beasley makes no complaint about being placed into Dallas District Court by defendants**, but with them paying the filing fee, in effect made them the party which brought the lawsuit into court. The purpose of Chapter 11 is to restrict frivolous and vexatious litigation. *See Harris v. Rose*, 204 S.W.3d 903, 905 (Tex. App.-Dallas 2006, no pet.). The legislature sought to strike a balance between Texans' right of access to their courts and the public interest in protecting defendants from those who abuse the Texas court system by systematically filing lawsuits with little or no merit. *Willms. Id.* at 804.

43. It is the defendants who filed their counter-suit against Beasley in Dallas County and admittedly filed Beasley's counter-suits against them.

44. There is no provision to hold a counter-defendant vexatious, as the statute clearly provides only for a defendant to find a plaintiff "who commences or maintains a litigation *pro se*" vexatious. Tex. Civ. Prac. & Rem. Code § 11.001(5); 11.051. Beasley is entitled to defend himself, with any compulsory counter-claims, without being declared vexatious and without being required to post security.

Defendants Cannot Complain of Beasley's Actions as a Pro Se Litigant

45. Defendants also cannot complain about Beasley being *pro se* when they actively and systematically obstruct Beasley's ability to have legal representation.

46. The vexatious litigant statute applies only against an individual who commences or maintains a litigation *pro se*. Tex. Civ. Prac. & Rem. Code § 11.001(2).

47. But this lawsuit includes the claim that Defendants have and continue to tortuously interfere with Beasley's ability to obtain counsel.

48. Defendants cannot benefit from a condition they caused to occur.

The Vexatious Litigant Statute is Unconstitutional

49. The statute, on its face and as applied to Beasley, is unconstitutional for various reasons.

a. The definition “‘Litigation’ means a civil action commenced, maintained, or pending in any state or federal court” is **unconstitutionally vague and overbroad**. Tex. Civ. Prac. & Rem. Code § 11.001(2). A statute prohibiting conduct that is not sufficiently defined is void for vagueness. *In re Fisher*, 164 S.W.3d 637, 655 (Tex.2005); *see Grayned v. City of Rockford*, 408 U.S. 104, 108, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972); *Commission for Lawyer Discipline v. Benton*, 980 S.W.2d 425, 437 (Tex.1998). It is **unclear whether original proceedings or post-judgment actions in appellate courts ARE OR ARE NOT** civil litigations³. The Texas Courts of Appeal are split on this determination, which underscores a non-lawyer’s ability to meaningfully know the definition of a “*civil litigation*”. To succeed on a mandamus action, the relator must show he has no adequate remedy on appeal, and upon that failing he may not be entitled to relief – regardless of whether his claim may ultimately be decided in his favor. Further, the bar is high to show in a mandamus action that a judge abused his or her discretion or had a ministerial duty to act, but failed. Again, a *pro se* relator’s misunderstanding of the standard for appellate review may not be a sign of vexation, but merely that of making an error at law. It is unconstitutional that a mistake in the law by a non-lawyer is penalized differently than a mistake in the law by a person who has the benefit of a formal legal education. It will often be unclear to a litigant, or even to a determining court, that a failed mandamus action is a “civil litigation” that counts toward the vexatious litigant standard. The courts of appeal have inherent authority to sanction any litigant that abuses the judicial process, or one who file groundless petitions, or one who makes misleading

³ Courts are free to ignore legal holdings from other states. *Penrod Drilling Corp. v. Williams*, 868 S.W.2d 294, 296 (Tex. 1993).

statements, Tex. R. App. P. 52.11. The appellate courts are in the exact position to determine if an original proceeding should count as being vexatious. Further, by their discretionary nature and without the requisite right to an appeal mandated by the Texas Constitution⁴, an original proceeding does not clearly meet the definition of a ‘civil litigation’, which guarantees at least one appeal in every controversy at law. A statute is unconstitutionally overbroad statute if it “sweeps within its scope a wide range of both protected and non-protected expressive activity.” *Hobbs v. Thompson*, 448 F.2d 456, 460 (5th Cir.1971). The court determining whether a litigant is vexatious is not in a position to determine if an original appellate proceeding was filed in good faith, whether it was not frivolous, or whether it was denied for a filing error or denied simply due to making an error at law. Lastly, the petition would need to be granted, but then relief denied to be finally adversely determined against the plaintiff. A denied petition for mandamus is rarely a final determination (i.e. with prejudice), unless stated in the accompanying opinion, as by their very definition, the petition may be refiled in the Court of Appeals or the Supreme Court, or the issue pursued later on a direct appeal.

b. The definition “‘Litigation’ means a civil action commenced, maintained, or pending in any state or federal court” is **unconstitutionally overbroad**. *See, Id.* Tex. Civ. Prac. & Rem. Code § 11.001(2). All litigants are free to use the laws of the courts in every U.S. jurisdiction to advance their claims, when done in good faith. **The Texas Legislature is without authority to penalize a litigant’s actions in a legal proceeding in Illinois, another state** – Cook County in particular. The vexatious litigant statute exempts actions in municipal court and small claims court, but what about Cook County Chancery Court, Cook County Circuit Court, and Cook County Probate Court, and the bazillion other courts and tribunals in Texas and in other states and

⁴ Tex. CONST., art. V.

within the federal government – a federal patent prosecution, defense of a tax liability in U.S. tax court, a federal bankruptcy, defense of an employee’s right to unemployment, pursuit of a Texas attorney general’s opinion, defense of a sales tax liability, or civil actions with the State Board of Disciplinary Appeals or with the State Commission on Judicial Conduct? The Texas Legislature is clearly without knowledge of the checks and balances and due process afforded Texas litigants in other jurisdictions. The Texas vexatious litigant statute, by considering legal actions outside of their jurisdiction, is unconstitutionally overbroad.

c. The definition “‘Plaintiff’ means an individual who commences or maintains a litigation pro se” is **unconstitutionally vague**. It could not be clear that Beasley, serving as a probate administrator representing the Heirs in his uncle’s estate in Illinois could be classified as a being *pro se*.

d. The phrase “finally determined adversely to the plaintiff” is **unconstitutionally vague**. Tex. Civ. Prac. & Rem. Code § 11.054(1)(A). An action dismissed for want of jurisdiction, dismissed for lack of subject matter jurisdiction under an exception, remanded from federal court to state court, removed from state court to federal court, dismissed without prejudice, dismissed for improper venue, dismissed with prejudice to affect a settlement agreement, denied but on appeal, denied with time yet to appeal, denied but interlocutory, or for which **provides some benefit** to plaintiff cannot be reasonably ascertained as *conclusively being finally determined adverse to the plaintiff*. e.g. *see*, ¶ 71, *supra*. **Suing to effect a settlement or to prevent future aggression are legitimate purposes of litigation.**

Plaintiff’s Claims are Meritorious – 1st Prong Cannot Be Met

50. Defendants have not and cannot show that plaintiff has no reasonable probability of prevailing in all of his claims. They attempt to misstate and minimize plaintiff’s claims.

51. Defendants, only in the 162nd Dallas District Court before Judge Moore, attempt to use the “vexatious litigant” label as a mechanism to *summarily* win this lawsuit and dismiss Beasley’s claims. However, the vexatious litigant statute is not a substitute for special exceptions, summary judgments, and motions to dismiss or for declaratory actions – with their protections of notice, affording due process, allowing hearing, and with determinations on the merits or applicable rules to dismiss a claim. Under the guise of a mere hearing, this court is without authority to usurp the due process protections of Rule 91a (to dismiss a claim), Rule 166a (for summary judgment), or of Rule 91 to afford a plaintiff to replead and state a valid claim.

52. In the vexatious litigant hearing, Beasley is not required to prove each and every element of his claim; the burden is on Defendants, and they have no final judgments (i.e. for res judicata purposes) to support their claim, where even their tortured reading of the November 3, 2017, attorney fee order (“prevailing party on *Peter Beasley’s declaratory judgment claims act*”) provides defendants no affirmative benefit against any subsequent litigation.

53. Defendant Nellson Burns has not prevailed on his claim against Beasley.

Burns’ Claim	Final Prior Judgment	Probability of Success
Defamation. Alleging Beasley falsely claimed Burns was fired from his employment at HollyFrontier Corporation because of this underlying conflict.	No prior determination.	Burns has no probability of success. Beasley merely repeated statements Burns’ own lawyer stated in open court.

54. Contrary to what defendant’s claim, SIM Dallas has not already prevailed on Peter Beasley’s declaratory claims, and defendants claim is false, for which they should be sanctioned. Tex. R. Civ. P. 13. Further, Defendant’s ongoing refusal to provide discovery responses undermines their argument that Beasley cannot prevail, and in fact suggests the opposite.

Beasley's Claim	Final Prior Judgment	Probability of Success
Breach of Contract	None – new claim.	Available. Relies on questions of fact for a jury to decide.
Fraudulent Inducement	None – new claim.	Available. Relies on questions of fact for a jury to decide.
Breach of Contract	None – new claim.	Available. Relies on questions of fact for a jury to decide.
Derivative injunctive claim to appoint a receiver.	None – new claim.	Available. Relies on questions of fact for a jury to decide.
Derivative injunctive to prevent distribution of member's dues to non-members.	None – new claim.	Available. Relies on questions of fact for a jury to decide.
Tortious interference with Beasley's contract for legal representation.	None – new claim.	Available. Relies on questions of fact for a jury to decide.
Derivative claim that Janis O'Bryan pay money to SIM.	None – new claim.	Available. Relies on questions of fact for a jury to decide.
Derivative claim that Nellson Burns pay money to SIM.	None – new claim.	Available. Relies on questions of fact for a jury to decide.
Declaratory judgment – expulsion was void.	None.	Available.
Declaratory judgment – illegally constituted board.	None.	Available.
Declaratory action that all actions by the illegally constituted board are void.	None.	Available.
Declaratory action that Beasley is still a SIM Director.	None.	Available.
Declaratory judgment that substantial give-away of member's assets to non-members are ultra-vires acts.	None.	Available.
Denied due process in expulsion.	None.	Available.
Defamation.	None. New claims.	Available. Relies on questions of fact for a jury to decide.

Tortious interference with business contract.	None.	Available. Relies on questions of fact for a jury to decide.
Business disparagement.	None.	Available. Relies on questions of fact for a jury to decide.
Claim for attorney fees.	None. New claim.	Available. Relies on questions of fact for a jury to decide.

55. The request to find plaintiff vexatious should be denied, *with prejudice*, as plaintiff's claims are sustainable and will be found meritorious.

Vexatious Litigant Criteria § 11.054(1) Fails

56. The vexatious litigant statute serves to protect litigants from plaintiffs who repeatedly sue a defendant who has already prevailed against the plaintiff. None of defendant's cited prior litigations show a pattern of vexation – *against a defendant*.

57. There is no vexatious history of five litigations in the preceding seven years before the filing of the motion that have been finally determined adversely to the plaintiff. The review period would be **April 19, 2018 back to April 20, 2011**.

Defendant's Claim	Outcome	Relation to § 11.054(1)
#1. <i>Peter Beasley v. Susan M. Coleman; Randall C. Romei</i> , Case No. 1:13cv1718 in the USDC Northern District of Illinois. March 6, 2013. 42 U.S.C. §§ 1983, 1985, and 1986 conspiracy against rights and attorney malpractice claims.	Dismissed for want of subject matter jurisdiction – Probate Exception to federal jurisdiction; remanded to state court.	Not relevant because: <ul style="list-style-type: none"> • Not finally determined adversely to Beasley • Not representing his own interests⁵ • Unconstitutional to count a litigation in another jurisdiction other than Texas state court

⁵ In *propria persona* is synonymous with *pro se*. In *propria persona* is defined as: in one's own proper person. *Coyle v. State*, 775 S.W.2d 843, 845 (Tex.App.-Dallas 1989, no pet.); Black's Law Dictionary 712 (5th ed.1979).

<p><i>#2. Peter Beasley v. John Krafscisin; John Bransfield; Ana-Marie Downs; Hanover Insurance Company</i>, Case No. 3:13cv4972 in the USDC Northern District of Texas. December 20, 2013.</p> <p>42 U.S.C. §§ 1983, 1985, and 1986 conspiracy against rights and declaratory judgment claims.</p>	<p>Dismissed for want of subject matter jurisdiction – Younger abstention to federal jurisdiction and improper venue.</p>	<p>Not relevant because:</p> <ul style="list-style-type: none"> • Not finally determined adversely to Beasley • Unconstitutional to count a litigation in another jurisdiction other than Texas state court
<p><i>#3. Peter Beasley v. Seabrum Richardson and Lamont Aldridge</i>, Cause No. DC-13-13433 in the 192nd Judicial District Court of Dallas County, Texas.</p> <p>Breach of contract.</p>	<p>Voluntary nonsuit. Dismissed, with prejudice.</p>	
<p><i>#4. In re: Peter Beasley</i>, No. 05-15-00276, Texas Fifth Court of Appeals. March 10, 2015.</p> <p>Seeking to void the court’s order to set-aside deemed admissions the day before trial over ten months after they were deemed, when Defendant admitted conscious indifference, Defendant had pursued no discovery during the discovery period, Defendant had not responded to Plaintiff’s discovery, Defendant had ignored the court’s orders, and Plaintiff demonstrated he would be prejudiced if the admissions were stricken over a year after the underlying tort had occurred.</p>	<p>Petition not granted and then denied, simply denied (i.e. without prejudice).</p>	<p>Not relevant because:</p> <ul style="list-style-type: none"> • Not finally determined adversely to Beasley • Unconstitutional to count a discretionary original proceeding

<p>#5. <i>Peter Beasley v. Society for Information Management</i>, Cause No. DC-16-03141 in the 162nd Judicial District Court of Dallas County, Texas. March 17, 2016.</p> <p>Declaratory judgment, due process, business disparagement, and tortious interference claims.</p>	<p>Voluntary nonsuit – dismissed without prejudice. Currently under appeal.</p>	<p>Not relevant because:</p> <ul style="list-style-type: none"> • Not finally determined adversely to Beasley – DIRECT APPEAL PENDING • Not maintained two years before a nonsuit⁶ • Benefit of counsel⁷
<p>#6. <i>In re: Peter Beasley</i>, No. 05-17-01365-CV, Texas Fifth Court of Appeals. November 29, 2017.</p> <p>Seeking to vacate Judge Moore's arguably void November 3rd attorney fee order</p>	<p>Petition not granted and then denied, simply denied (i.e. without prejudice).</p>	<p>Not relevant because:</p> <ul style="list-style-type: none"> • Not finally determined adversely to Beasley – remedy available by appeal IS PENDING⁸ • Post-judgment appeal. • Unconstitutional to count a discretionary original proceeding
<p>#7. <i>In re: Peter Beasley</i>, No. 17-1032, Supreme Court of December 18, 2017.</p> <p>Seeking to vacate Judge Moore's arguably void November 3rd attorney fee order</p>	<p>Petition not granted and then denied, simply denied (i.e. without prejudice).</p>	<p>Not relevant because:</p> <ul style="list-style-type: none"> • Not finally determined adversely to Beasley – remedy available by appeal IS PENDING⁸ • Post-judgment appeal. • Unconstitutional to count a discretionary original proceeding
<p>#8. <i>In re: Peter Beasley</i>, No. 05-18-00382-CV, Texas Fifth Court of Appeals, filed on April 5, 2018.</p> <p>Seeking to vacate Judge Roach's transfer of venue to</p>	<p>Petition not granted and then denied, simply denied (i.e. without prejudice).</p>	<p>Not relevant because:</p> <ul style="list-style-type: none"> • Not finally determined adversely to Beasley – remedy available by appeal • Not finally determined adversely to Beasley before April 19, 2018.

⁶ See, *Retzlaff v. GoAmerica Commc'ns Corp.*, 356 S.W.3d 689, 700 (Tex. App.-El Paso 2011, no pet.) (counting only involuntary dismissals)

⁷ See, *Spiller v. Spiller*, 21 S.W.3d 451, 454 (Tex.App.-San Antonio 2000, no pet.)

⁸ *Goad v. Zuehl Airport Flying Community Owners Ass'n, Inc.* No. 04-11-00293-CV (Tex.App.—San Antonio, May 23, 2012, no pet.) (“an appeal of a judgment in a civil action is not a separate “litigation” as that word is used in Chapter 11”). The statute by its terms does not apply to post-judgment proceedings. See, *In re Florance*, 377 S.W.3d 837, 839 (Tex. App.-Dallas 2012, orig. proceeding).

keep this current lawsuit away from Judge Moore – in hopes of getting an unbiased tribunal and this conflict moved forward to a permanent resolution.		<ul style="list-style-type: none"> • Unconstitutional to count a discretionary original proceeding
<p><i>#9. In re: Peter Beasley II</i>, No. 05-18-00395-CV, Texas Fifth Court of Appeals. April 8, 2018.</p> <p>Seeking to require Judge Roach's to allow a Rule 12 challenge to defendant's attorneys and keep this current lawsuit away from Judge Moore – in hopes of getting an unbiased tribunal and this conflict moved forward to a permanent resolution.</p>	Petition not granted and then denied, simply denied (i.e. without prejudice).	<p>Not relevant because:</p> <ul style="list-style-type: none"> • Not finally determined adversely to Beasley – remedy available by appeal • Not finally determined adversely to Beasley before April 19, 2018. • Unconstitutional to count a discretionary original proceeding
<p><i>#10. In re: Peter Beasley III</i>, No. 05-18-00553-CV, Texas Fifth Court of Appeals. May 14, 2018.</p> <p>Seeking to require Judge Moore to grant or refer a disqualification and recusal motion.</p>	Petition not granted and then denied, simply denied (i.e. without prejudice).	<p>Not relevant because:</p> <ul style="list-style-type: none"> • Not finally determined adversely to Beasley – remedy available by appeal • Not commenced before April 19, 2018. • Unconstitutional to count a discretionary original proceeding
<p><i>#11. In re: Peter Beasley IV</i>, No. 05-18-00559-CV. May 15, 2018.</p> <p>Seeking to vacate Judge Goldsteins' transfer of venue to keep this current lawsuit away from Judge Moore – in hopes of getting an unbiased tribunal and this conflict moved forward to a permanent resolution.</p>	Petition not granted and then denied, simply denied (i.e. without prejudice).	<p>Not relevant because:</p> <ul style="list-style-type: none"> • Not finally determined adversely to Beasley – remedy available by appeal • Not commenced before April 19, 2018. • Unconstitutional to count a discretionary original proceeding

58. The request to find plaintiff vexatious under CPCR § 11.054(1) fails and should be denied, *with prejudice*.

59. There can be no doubt that litigations #5 - #11 are inapplicable, are based on false facts, and are made with patently false legal arguments. Sanctions should lie. Tex. R. Civ. P. 13.

Vexatious Litigant Criteria § 11.054(2) Fails Too

60. No claim has been finally determined against the plaintiff in favor of defendants which plaintiff is relitigating. The only determination in favor of defendants is an order for attorney fees, *which is not finally determined*, as it is under direct appeal.

a. Plaintiff is not relitigating the validity of the attorney fee order.

b. The attorney fee order does not determine or conclude any claim, controversy, or any issues of fact which plaintiff is relitigating.

61. Further, it is well established law that interlocutory orders on matters that are merely collateral or incidental to the main suit do not operate as res judicata or collateral estoppel. *See Old v. Clark*, 271 S.W. 183, 185 (Tex.Civ.App.- Dallas 1925, no writ). Application of collateral estoppel also requires that there be a final judgment. *See Gareis v. Gordon*, 243 S.W.2d 259, 260 (Tex.Civ.App.- Galveston 1951, no writ). See, Exhibit A.

Defendant's Claim	Prior Final Determination	Relation to § 11.054(2)
#1. Repeatedly litigating and/or attempting to relitigate the claims related to his expulsion.	This issue has NEVER, never, never, EVER been determined.	No re-litigation.
#2. The application of the attorney-client privilege to communications between defense counsel and SIM-DFW.	No final determination – only an erroneous⁹ interlocutory finding ever existed, which is no longer valid.	No re-litigation.

⁹ See, Exhibit A.

#3. “Witness statements” of members of SIM-DFW must be secured via properly noticed depositions.	No final determination – only an erroneous⁹ interlocutory finding ever existed, which is no longer valid.	No re-litigation.
#4. Recusal of the Honorable Maricela Moore.	No final determination	It is absurd to present a legal argument that a denied recusal motion exists into perpetuity.
#5. Disqualification of Peter Vogel as defense counsel	This issue has NEVER, never, never, EVER been determined.	No re-litigation.
#6. Authority for defense counsel to appear as counsel for SIM-DFW, Janis O’Bryan, and Nellson Burns.	This issue has NEVER, never, never, EVER been determined.	No re-litigation.

62. The request to find plaintiff vexatious under CPCR § 11.054(2) fails and should be denied, *with prejudice*.

63. There can be no doubt that all of these claims are patently false and are made with patently false legal arguments. Sanctions should lie. Tex. R. Civ. P. 13.

Absolutely No Showing of Vexation

64. Certainly, “any person of reasonable intelligence would be able to discern that if he were to file five lawsuits in seven years, all of which were decided in favor of the opposing party or were determined to be frivolous he may be subject to being labeled a vexatious litigant”, *See, Leonard v. Abbott*, 171 S.W.3d 451, 457-58 (Tex.App.-Austin 2005, pet. denied), but it is not clear that an appellate original proceeding, challenging a court’s ruling, to obtain judicial compliance with a ministerial act, or to challenge the law are civil litigations against an opposing party sufficient enough to warrant holding a litigant as being vexatious.

65. Vexatious litigants in this state have been found with 11 identified of **13 claimed failed lawsuits in seven years**, (Steven Aubrey), *See, Aubrey v. Aubrey*, 523 S.W.3d 299, 311 (Tex.

App.-Dallas 2017, no pet.), **26 failed lawsuits** (Tom Retzlaff), *See, Retzlaff v. GoAmerica Commc'ns Corp.*, 356 S.W.3d 689, 702-705 (Tex. App.-El Paso 2011, no pet.) and with decades of religations in many federal, state trial courts and appeals courts (Yvonne Brown's 7-year plus attempts to relitgate the revocation of her nursing license), *See, Brown, Id.* Vexatious litigants often have multiple relitigations against the same defendant after a judgment had been rendered against them. Frequently, there are orders from multiple courts defining motions and lawsuits as frivolous, orders of sanctions, and findings of malicious behavior.

66. Kenneth L. Harris is apparently no stranger to litigation. *see, Harris v. Rose*, 204 S.W.3d 903, 905 (Tex. App.-Dallas 2006, no pet.). In a fifteen year period, he has filed thirty pro se lawsuits in Dallas County, and **had been held in contempt of court twelve times**. Neither court orders nor injunctions seem to dissuade Harris from filing lawsuits. When the Unauthorized Practice of Law Committee obtained a permanent injunction prohibiting Harris from engaging in the unauthorized practice of law, Harris violated the injunction and continued to file lawsuits. By 2006, five of Harris' lawsuits had been dismissed with prejudice since 2002.

67. Peter Beasley is not vexatious in his zealous, two-year pursuit to redress the alleged wrongs committed by defendants against him. Defendant's claim that he epitomizes vexatious activity is false, and is a false legal argument.

68. **Beasley steadfastly continues to seek his day in court.**

Unconstitutional to Require Security to Continue His Appeal

69. Plaintiff is not vexatious and the request that he post security to commence, maintain, or cause to maintain any other existing lawsuit or legal action by Peter Beasley, pro se or with an attorney, is unwarranted and is unconstitutional, and should be denied, **with prejudice**.

70. Defendant's obvious goal with the vexatious litigant motion is to 1) require Beasley to post security in order to maintain his appeal of the November 3, 2017, attorney fee order, 2) dismiss this current lawsuit upon some inability to post security, and 3) to avoid discovery and public ridicule for defendant's misdeeds. Defendants and their many lawyers are trying desperately to hide the truth.

71. But, **Beasley prevailed in his recent *denied* mandamus petition**, No. 05-18-00553, which defined that this court may not order Beasley to post a security to continue his appeal, or to post security to maintain any on-going litigations that preceded the determination of this motion. Exhibit B.

72. The 162nd District Court, Judge Moore, cannot interfere with Beasley's pending appeal to overturn its erroneous prior rulings.

No Authority to Bring the Claim

73. Lastly, opposing counsel has no authority to defend this lawsuit nor to bring the claim. Plaintiff reasserts his pending Rule 12 challenge against lawyers Vogel, Bragalone, and Garcia.

74. Their vexatious litigant motion should be stricken.

Wherefore, plaintiff requests the court deny defendant's vexatious litigant motion, *with prejudice*, enter findings of fact and conclusions of law, and find Defendant's motion was groundless and frivolous, filed in bad faith and for the purpose of delay. Plaintiff asks that defendants and their counsel be sanctioned.

Respectfully submitted,

/s/ Peter Beasley

Peter Beasley
P.O. Box 831359
Richardson, Texas 75083
972-365-1170

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of July 2018, a true copy of the foregoing instrument was served on counsel for defendants, and the electronic transmissions were reported as complete.

/s/ Peter Beasley
Peter Beasley

FRYAR LAW FIRM P.C.

via email pbeasley@netwatchsolution.com

Peter Beasley
President
Netwatch Solutions, Inc.

November 17, 2017

Re: Cause No. DC-16-03141; *Beasley v. Society of Information Management*, in the 162nd
Judicial District Court, Dallas County, Texas

Dear Mr. Beasley:

You have asked for my legal opinion as to your right to speak with and contact members of SIM-DFW, in light of the Order of the 162nd District Court regarding such contacts. My opinion, for the reasons stated below, is that you are free to contact those individuals to the same extent as you would be to contact, communicate, or associate with anyone else.

The issue came up in the above-referenced litigation in connection with your attempts to interview and conduct informal discovery of other members of SIM-DFW. Mr. Vogel objected to such contacts on the grounds that these persons were individually represented by him and that you as a pro se party should be required to go through counsel. Legally, Mr. Vogel never represented the individual members; he only represented the organization. However, the Court erroneously accepted Mr. Vogel's position. Second, the ethical rules prohibiting lawyers from contacting represented individuals do not apply to you. Nevertheless, the Court also agreed that your efforts should be through counsel.

On February 22, 2017, the Court signed an Order granting in part and denying in part a motion to compel discovery filed by you. That Order stated in relevant part: "The Court further Orders that Plaintiff's request to speak to members of SIM-DFW is DENIED and any requests to depose SIM-DFW members who are represented by counsel is to be done via request for deposition pursuant to the Texas Rules of Civil Procedure." The Court has broad discretion to regulate discovery; therefore, even though the legal basis for the Order was erroneous, the Court had the power to enter it.

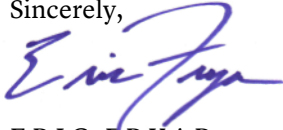
It is important to understand the following: 1. You were not ordered not to contact SIM-DFW members. 2. No temporary injunction was entered against you. 3. The Order is merely a denial of your request and direction from the Court regulating discovery. Nevertheless, based on the expressed attitude of the Judge, and out of an abundance of caution, you treated the Order as though it were a temporary injunction prohibiting contact.

You nonsuited the lawsuit on October 5, 2017. While the Court maintained jurisdiction over collateral matters, the nonsuit ended the proceeding on the merits. The nonsuit necessarily ended the effect of all orders regulating discovery and would have terminated even a temporary injunction had one been entered. Therefore, the Order no longer has any legal effect.

The First and Fourteenth Amendments to the Constitution protect the right of association. Therefore, you are legally free to talk to, contact, and associate with SIM-DFW members. Of course, you may still be subject to liability if your communications violate other legal duties—e.g., if you falsely defame Mr. Vogel to a SIM-DFW member, he might sue you for slander.

I hope this answers your question. Please contact me if you have any further concerns.

Sincerely,



ERIC FRYAR

DENY and Opinion Filed May 22, 2018.



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-18-00553-CV

IN RE PETER BEASLEY, Relator

**Original Proceeding from the 162nd Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-18-05278**

MEMORANDUM OPINION

**Before Justices Francis, Evans, and Schenck
Opinion by Justice Schenck**

Before the Court is relator's May 14, 2018 petition for writ of injunction and petition for writ of mandamus. This is the third original proceeding filed by relator since April 5, 2018. In this original proceeding, relator complains that the trial court has taken no action on his May 8, 2018 motion for disqualification and recusal of Judge Maricela Moore and seeks a writ of mandamus directing Judge Moore to act on the motion. Relator also seeks a writ of injunction enjoining Judge Moore from ruling on the motion to designate relator as a vexatious litigant filed by the real parties in interest, from ordering relator to post security to maintain his appeals in this court, and from ordering relator to post security or to obtain permission to appeal any vexatious litigant order that may be entered in the future. For the following reasons, we deny the relief requested.

Writ Jurisdiction

This Court's writ jurisdiction is governed by section 22.221 of the Texas Government Code. This Court "may issue all writs of mandamus, agreeable to the principles of law regulating those writs, against (1) a judge of a district, statutory county, statutory probate county, or county court in the court of appeals district. . . ." TEX. GOV'T CODE ANN. § 22.221(b)(1) (West Supp. 2017). To be entitled to mandamus relief, a relator must show both that the trial court has clearly abused its discretion and that relator has no adequate appellate remedy. *n re ru ential ns. o.*, 148 S.W.3d 124, 135–36 (Tex. 2004) (orig. proceeding).

This Court's injunctive powers, however, are more limited. "Each court of appeals ... may issue ... all ... writs necessary to enforce the jurisdiction of the court." TEX. GOV'T CODE ANN. § 22.221(a) (West Supp. 2017). A court of appeals "has no original jurisdiction to grant writs of injunction, except to protect its jurisdiction over the subject matter of a pending appeal, or to prevent an unlawful interference with the enforcement of its judgments and decrees." *tt v. Bell*, 606 S.W.2d 955, 957 (Tex. Civ. App.—Waco 1980, no writ); *see* TEX. R. APP. P. 24.3; *see also o son v. ole an*, No. 01-01-00114-CV, 2002 WL 1340314, at *7 (Tex. App.—Houston [1st Dist.] June 20, 2002, pet. ref'd) (holding that attempts to suspend enforcement of judgment pending appeal are generally within the trial court's authority).

Discussion

Based on the record before us, we conclude relator has not shown he is entitled to the relief requested.

First, relator has not established that the trial court abused its discretion by not taking action on the motion to recuse within the four business days immediately following its filing. Upon notice of the filing of a motion to recuse, a trial judge has only two choices—she must promptly either voluntarily recuse herself or refer the motion to the presiding judge of the administrative

judicial district for action. *In re Presley*, No. 05-00-00793-CV, 2000 WL 688239, at *1 (Tex. App.—Dallas May 23, 2000, orig. proceeding) (citing TEX. R. CIV. P. 18a (c), (d) and *Greenlee Benson is an iel er v. o ell*, 685 S.W.2d 694, 695 (Tex. App.—Dallas 1984, orig. proceeding). “Thus, it is a clear abuse of discretion for the trial judge to not act on a motion for recusal in one of the two required ways.” . But the requirement for prompt action does not equate to a mandate for immediate action. *See In. Motors or . v. vins*, 830 S.W.2d 355, 358 (Tex. App.—Corpus Christi 1992, no writ) (a trial judge is permitted to hold a hearing to determine whether to recuse or refer); *see also In re rai* , 426 S.W.3d 106, 107 (Tex. App.—Houston [1st Dist.] 2012, orig. proceeding) (a trial court has a reasonable time within which to consider a motion and to rule); *In re Sar issian*, 243 S.W.3d 860, 861 (Tex. App.—Waco 2008, orig. proceeding) (same).

Here, relator filed the motion to recuse on Tuesday, May 8, 2018 and filed this petition on Monday, May 14, 2018. He has provided no evidence showing what action, if any, Judge Moore has taken on the motion since its filing. Further, he has presented no evidence that he has brought the motion to the trial court’s attention and requested a ruling. As such, relator has not established that the trial judge has refused to act promptly on the motion to recuse and has not established an abuse of discretion. Accordingly, we deny relator’s petition for writ of mandamus.

We also deny relator’s request for injunctive relief. Relator asks the Court to enjoin the trial court from (1) ruling on the motion to designate relator as a vexatious litigant, (2) ordering relator to post security to maintain his appeals in this court, and (3) ordering relator to post security or to obtain permission to appeal any vexatious litigant order that may be entered in the future. Should the trial court rule on the motion to designate relator as a vexatious litigant, relator is statutorily permitted to appeal that ruling. TEX. CIV. PRAC. & REM. CODE § 11.101(c) (“A litigant may appeal from a prefiling order entered under Subsection (a) designating the person a vexatious

litigant”). Further, a vexatious litigant order would not apply to currently pending appeals. TEX. CIV. PRAC. & REM. CODE § 11.101(a) (generally authorizing court to enter order prohibiting person from filing new litigation pro se without permission from local administrative judge when court finds that person is “vexatious litigant” after notice and hearing). Finally, the trial court maintains jurisdiction to determine issues related to supersedeas, and relator has appellate remedies available to him regarding supersedeas orders. TEX. R. APP. P. 24.3, 24.4; *see Bur v. o nson*, 445 S.W.2d 631, 632 (Tex. Civ. App.—El Paso 1969, no writ) (“Both injunction and prohibition do not lie where there is an adequate remedy through the ordinary channels of procedure.”). As such, any future actions taken by the trial court as to the vexatious litigant motion or as to supersedeas related to a current appeal do not interfere with this Court’s jurisdiction or with this Court’s enforcement of its judgments or decrees. We find nothing in this record indicating that an injunction is necessary here.

To the extent relator’s requests can be construed as seeking a writ of prohibition, we deny that relief as well. A writ of prohibition is used to protect the subject matter of an appeal or to prohibit an unlawful interference with enforcement of an appellate court’s judgment. *ollo ay v. ift ourt of eals*, 767 S.W.2d 680, 683 (Tex. 1989) (orig. proceeding). The writ is designed to operate like an injunction issued by a superior court to control, limit, or prevent action in a court of inferior jurisdiction. . at 682–83. A writ of prohibition has three functions: (1) preventing interference with higher courts in deciding a pending appeal; (2) preventing an inferior court from entertaining suits that will re-litigate controversies already settled by the issuing court; and (3) prohibiting a trial court’s action when it affirmatively appears the court lacks jurisdiction. *u le l. o. n . v. al er*, 641 S.W.2d 941, 943 (Tex. App.—Dallas 1982, orig. proceeding).

As discussed above, the trial court’s future actions regarding the vexatious litigant motion or supersedeas issues will not interfere with this Court’s jurisdiction over a pending appeal.

Moreover, no settled controversy appears in the record, and there is no evidence that the actions relator seeks to prohibit are outside of the trial court's jurisdiction. Relator has, therefore, not established a right to a writ of prohibition.

Accordingly, we deny relator's petition for writ of injunction and deny relator's petition for writ of mandamus. *See* TEX. R. APP. P. 52.8(a) (the court must deny the petition if the court determines relator is not entitled to the relief sought).

/David J. Schenck/

DAVID J. SCHENCK
JUSTICE

180553F.P05

Tab E

Cause No. DC-18-05278

PETER BEASLEY,	§	IN THE DISTRICT COURT OF
	§	
	§	
v.	§	DALLAS COUNTY, TEXAS
SOCIETY OF INFORMATION	§	
MANAGEMENT, DALLAS AREA	§	
CHAPTER, JANIS O'BRYAN, NELLSON	§	44 th JUDICIAL DISTRICT
BURNS		

PLAINTIFF'S 1ST AMENDED ANSWER, GENERAL DENIAL AND AFFIRMATIVE DEFENSES

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Plaintiff/Counter-Defendant, Peter Beasley, and in support of this 1st Amended Answer, General Denial and Affirmative Defenses, states the following:

GENERAL DENIAL

1. Pursuant to Rule 92 of the TEXAS RULES OF CIVIL PROCEDURE, Plaintiff/Counter-Defendant generally denies each and every, all and singular, of the material allegations contained in Defendant/Counter-Plaintiff's Original Counterclaim and any supplements or amendments thereto, and demands strict proof thereof.

AFFIRMATIVE DEFENSES

2. Plaintiff/Counter-Defendant hereby states the following affirmative and additional defenses to the Defendant/Counter-Plaintiff's Original Counterclaim (and any supplements or amendments thereto), but do not assume the burden of proof on any such defenses except as otherwise required by law. Plaintiff/Counter-Defendant reserves the right to assert additional defenses and to otherwise supplement or amend this Answer. Each of these defenses is pled in the alternative, as all liability is denied.

- The Defendant/Counter-Plaintiff's vexatious litigant claim is barred by estoppel.
- The Defendant/Counter-Plaintiff's vexatious litigant claim is barred by the doctrine of consent.
- The Defendant/Counter-Plaintiff's vexatious litigant claim is barred by laches.
- The Defendant/Counter-Plaintiff's defamation claims are barred, in whole or in part, because Plaintiff/Counter-Defendant's statements are true.
- The Defendant/Counter-Plaintiff's defamation claims are barred, in whole or in part, because Plaintiff/Counter-Defendant's statements are true.

- The Defendant/Counter-Plaintiff's defamation claims are barred, in whole or in part, by privilege of statements made in the court of judicial proceedings.
- The Defendant/Counter-Plaintiff's defamation claims are barred, in whole or in part, because Defendant/Counter-Plaintiff's own acts or omissions caused or contributed to the Defendant/Counter-Plaintiff's alleged injury.
- Defendant/Counter-Plaintiff's defamation claims are barred, in whole or in part, because Plaintiff/Counter-Defendant's statements, if any, were made without malice.
- Defendant/Counter-Plaintiff's defamation claims are barred, in whole or in part, because none of the statements claimed by Defendant/Counter-Plaintiff's to be defamatory were authored by Plaintiff/Counter-Defendant.
- The Defendant/Counter-Plaintiff's defamation claims are barred, in whole or in part, by the doctrine of consent.
- The Defendant/Counter-Plaintiff's defamation claims are barred, in whole or in part, by common-law qualified privilege.
- The Defendant/Counter-Plaintiff's defamation claims are barred, in whole or in part, because Defendant/Counter-Plaintiff's reputation was previously diminished.
- Defendant/Counter-Plaintiff's claim for exemplary damages as part of his defamation claims is barred, in whole or in part, because Defendant/Counter-Plaintiff's failed to comply with the Defamation Mitigation Act.
- Defendant/Counter-Plaintiff's claims for declaratory judgment are barred, in whole or in part, because this court does not have jurisdiction to clarify or modify a judgment from another court.

WHEREFORE: For the foregoing reasons, Plaintiff pray that Defendant Nellson Burns and Defendant SIM Dallas Area Chapter take nothing by way of their claims, that Plaintiff/Counter-Defendant recover his attorneys' fees, costs and expenses as allowed by law, and for such other and further general relief, at law or in equity, as the ends of justice require and to which the evidence may show it justly entitled.

Respectfully submitted,

/s/Peter Beasley

Peter Beasley, pro se

P.O. Box 831359

Richardson, TX 75083-1359
(972) 365-1170
pbeasley@netwatchsolutions.com

Certificate of Service

I hereby certify that on the 29th day of April 2018, a true copy of the foregoing instrument was served on opposing counsel for the defendants by electronic means and the electronic transmissions were reported as complete.

/s/Peter Beasley
Peter Beasley

Tab F

296-05741-2017

CAUSE NO. ~~417-05741-2017~~

PETER BEASLEY,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
SOCIETY OF INFORMATION	§	COLLIN COUNTY, TEXAS
MANAGEMENT, DALLAS AREA	§	
CHAPTER, JANIS O'BRYAN, NELLSON	§	
BURNS,	§	
	§	
Defendants.	§	417TH JUDICIAL DISTRICT

DEFENDANTS' ORIGINAL COUNTERCLAIM

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Defendants Society of Information Management, Dallas Area Chapter¹ ("SIM-DFW"), Janis O'Bryan ("O'Bryan") and Nellson Burns ("Burns") (collectively referred to as "Defendants") and file this Counterclaim, subject to Defendants' pending Motion to Transfer Venue, Against Plaintiff/Counter-Defendant Peter Beasley and would show the Court the following:

I.
FACTS

1. The Society of Information Management, founded in 1969, is a national, professional society of information technology leaders whose goal is to connect senior level IT leaders with peers in their communities, to provide opportunities for collaboration to share

¹ Defendant SIM-DFW is incorrectly named by Plaintiff/Counter-Defendant Peter Beasley. The organization's name is the Society for Information Management, Dallas/Fort Worth Chapter.

knowledge, provide networks, give back to local communities, and provide its members with opportunities for professional development.

2. Locally, SIM-DFW, is one off the largest chapters, with more than 300 members in 2018. SIM-DFW meets most months to engage in social networking and conversations about important managerial and technical issues facing IT practitioners.

3. Plaintiff/Counter-Defendant Peter Beasley was a member of SIM-DFW from September 2005 to April 19, 2016. In early 2016 a disagreement arose between Peter Beasley, then a member of the Executive Committee, and the other Committee members. The subject of the disagreement is undisputed: Peter Beasley believed, and continues to believe, that SIM-DFW is engaged in waste and mismanagement of the organization's finances because the Board determined that it was not going to fully fund his, or any Committee member's, budget request.

4. As a result of the ongoing disagreement with the Executive Committee, on March 17, 2016, Beasley, *pro se*, filed a lawsuit in the 162nd Judicial District Court, Dallas County, Texas, Cause No. DC-16-03141 ("Original Lawsuit") against SIM-DFW. Initially, Beasley chose not to serve the Original Lawsuit and instead informally provided it to SIM-DFW's Board via email and threatened to force SIM-DFW into costly and distracting litigation unless he could be promised a meeting wherein a "real option to reverse some of the final decisions" he'd been informed of was offered. However, in filing his lawsuit, Beasley confirmed that he had no intent to work within the existing group governance structure and further confirmed that he was a bad fit for the organization.

5. The Executive Committee, surprised at having been sued, evaluated a response to the lawsuit and discovered that in addition to aggressively seeking to control the organization, Beasley was using the organization to solicit business from members — a violation of the rules of

the organization. He also violated other SIM-DFW rules, including binding SIM-DFW to a monetary obligation in excess of the budgeted amounts for a meeting he organized, and other *ultra vires* acts. The Executive Committee decided that the violations supported good cause for expulsion and called a meeting to consider his expulsion from SIM-DFW.

6. In response to receiving notice of the expulsion meeting, Plaintiff made good on this threat to engage SIM-DFW in litigation and improperly secured an *ex parte* TRO preventing SIM-DFW from moving forward with a planned meeting. He did this even though he'd been advised that SIM-DFW was represented by Peter Vogel and after engaging in several emails with Mr. Vogel regarding a potential informal mediation. Beasley then formally served his now amended claims against SIM-DFW and, in a move that can only be described as harassing and vindictive, added Janis O'Bryan, then –President of SIM-DFW, in her individual capacity as a defendant.

7. From these beginnings, Beasley and SIM-DFW (and various individual Executive Committee members) have been engaged in nearly two years of litigation. For much of the last two years Peter Beasley has chosen to remain *pro se*. But at various times he has retained the services of counsel — typically to respond to or argue a specific motion. The Original Lawsuit ended when his last set of attorneys (Eric Fryar and Christina Richardson of the Fryar Firm) filed a non-suit without prejudice of his claims against SIM-DFW and the claims of his company, Netwatch Solutions, against Nellson Burns, a Board Member, 2017-2018 President of SIM-DFW, and a customer of Netwatch Solutions.

8. After the October 5, 2017 non-suit was filed, the day before the responses to SIM-DFW and Nellson Burns's motions for summary judgment were due, SIM-DFW filed a motion seeking Rule 13 and CPRC Chapter 10 sanctions against Beasley and *all* of his attorneys.

The Dallas County Court held a hearing on October 31, 2017 and expressed an intent to deny SIM-DFW's requested sanctions but asked the attorneys to provide supplemental briefing on the issue of whether or not, in light of the timing of the non-suit and the inferences that could be drawn from Beasley's litigation behavior, good cause existed to declare SIM-DFW the prevailing party on Beasley's Declaratory Judgment Act Claims.

9. The requested briefing was provided and the Court continued the hearing on the Motion for Sanctions to November 3, 2017. By order of the same date the Court declared SIM-DFW a prevailing party and awarded SIM-DFW \$211,032.02 in attorneys' fees.²

10. Five days later, Beasley's attorneys were fired and Beasley, again *pro se*, began an onslaught of motions practice. Filing multiple motions to recuse and disqualify the Honorable Judge Maricela Moore of the 162nd Court and attorney Peter Vogel (all denied), an *ex parte* motion seeking a continuance of the hearing on his motion to recuse and disqualify Judge Moore (denied), two Petitions for Writ of Mandamus seeking to overturn the November 3rd Order (denied), a motion to modify the final judgment (denied), a motion seeking sanctions against SIM-DFW's attorneys (denied), and a Bill of Exceptions (denied).

11. While filing these harassing motions in Dallas County Civil District Court, Beasley also voluntarily dismissed an appeal filed by his former attorneys, filed a second appeal, and, *incredibly*, filed this lawsuit in Collin County re-urging claims that had already been brought in Dallas County **including those same Declaratory Judgment Act claims for which SIM-DFW has been declared a prevailing party!**

² See, Order attached hereto as **Exhibit A**.

12. Beasley's remedy to challenge the November 3, 2017 Order granting attorneys' fees and declaring SIM-DFW a prevailing party on Beasley's Declaratory Judgment Act claims is appeal. His attempts to re-litigate those same claims, and dispute the attorneys' fees award by filing the current lawsuit in Collin County is an abuse of everything that our judicial system represents.

II. COUNTER-CLAIMS

DECLARATORY JUDGMENT SUPPLEMENTAL RELIEF

13. Defendants/Counter-Plaintiffs request that this Court enter a Declaratory Judgment pursuant to TEXAS CIVIL PRACTICE AND REMEDIES CODE Section 37.011 that provides that further relief based on a declaratory judgment or decree may be granted whenever necessary or proper..

14. Defendants/Counter-Plaintiffs request that this Court enter an ORDER confirming that Defendant SIM-DFW prevailed on Beasley's Declaratory Judgment Act Claims as pled first in Dallas County and now re-pled in Collin County. Specifically, SIM-DFW seeks that this Court, consistent with the Dallas County District Court's November 3, 2017 Order, declare as follows:

- a. Beasley's April 19, 2016 expulsion from SIM-DFW was consistent with SIM-DFW's Bylaws, did not violate any due process protections under the Texas Constitution, and did not violate any applicable provision of the Texas Business Organizations Code;
- b. The actions of the SIM-DFW Board of Directors taken after April 19, 2016 were performed with all necessary formalities and consistent with the SIM-DFW Bylaws and are not subject to ratification by Beasley, a non-member; and

- c. SIM-DFW's efforts to provide philanthropy are consistent with the SIM-DFW Bylaws and SIM-DFW's Articles of Incorporation to the extent such philanthropic giving is approved by the SIM-DFW Board of Directors.

15. The clarification of the Dallas County District Court's November 3, 2017 Order is necessary to prevent further attempts by Counter-Defendant Beasley to continue to litigate issues related to his April 19, 2017 expulsion from SIM-DFW.

16. Pursuant to Chapter 37 of the TEXAS CIVIL PRACTICE AND REMEDIES CODE, Defendants/Counter-Plaintiffs request that this Court award all reasonable attorneys' fees incurred in this case and through any appeal of this matter by Beasley to Defendants/Counter-Plaintiffs.

DEFAMATION PER SE

17. Defendant/Counter-Plaintiff Nellson Burns has been pursued relentlessly by Beasley. Burns was initially named a defendant in the Dallas County lawsuit in June 2016 and then in February 2017, those claims were dismissed by Beasley. Only weeks later, Beasley's company, Netwatch Solutions, intervened in the Dallas County lawsuit and sued Burns individually for allegedly tortiously interfering with Burns's then-employer's contract with Netwatch Solutions.

18. The intervention claim never had any merit. Burns, the then-CIO of his company, could not tortiously interfere with his own company's contract with Netwatch Solutions. Burns's company was forced to retain counsel and participate in discovery and tellingly confirmed with Netwatch's counsel in July 2017 that there could be no tortious interference claim against Burns in the context of his role with Netwatch because (1) no contract between the company and Netwatch was terminated and (2) it was the poor judgment demonstrated by Beasley in pursuing

the discovery from Burns's company, and not any act or omission committed by Burns, that led to the company terminating all commercial relationships with Netwatch.

19. After the claims against Burns were non-suited, Burns left his company for another opportunity. However, Beasley's harassment of Burns did not stop. At multiple times in writings to Burns's colleagues in the IT industry, Beasley has alleged that Burns was "terminated" due to his tortious interference with the contractual and business relationship between Burns's then-employer and Netwatch.

20. Specifically, Beasley has made the following defamatory statements to Burns's colleagues and professional contacts in the IT industry:

- a. "Nellson Burns is destroying the Dallas SIM Chapter and is wasting its assets for the sole purpose to hide his bad acts."
- b. "Nellson has now been fired from [his former employer] because of how he needlessly embroiled his employer in this conflict."
- c. "Sworn depositions from [Nellson Burns's former employer's] VP of Internal Audit proved that Nellson Burns lied to his corporate audit department about me and this conflict with SIM."
- d. "[Nellson Burn's] staff also swore that Nellson Burns lied to them too."

21. Each of the above-statements is an assertion of fact that is objectively verifiable. Yet, Beasley has chosen, out of malice, to broadcast and publish these statements to colleagues and professional contacts in the IT industry in an attempt to harm Burns in his office, profession, and occupation.

22. Alternatively, Beasley has defamed Burns by innuendo or by implication by omitting material facts or juxtaposing facts in connection with the above statements.

23. Burns has suffered general damages as a result of Beasley's defamatory statements. Accordingly, Burns asks this Court to award his general damages, to be established at trial, pre and post-judgment interests, and costs of court in excess of \$20 as allowed by Tex. R. Civ. P. 137.

III. PRAYER

WHEREFORE, PREMISES CONSIDERED, Counter-Plaintiffs' pray that Counter-Defendant be cited to appear and answer herein, that upon final trial and other hearing of this cause that Counter-Plaintiffs' recover damages from Counter-Defendant in accordance with the evidence and as the jury deems them deserving, that Counter-Plaintiffs' recover costs and attorneys' fees, interest, both pre-judgment and post-judgment, as allowable by law, and for such other further relief, both general and special, both in law and in equity, to which Counter-Plaintiffs' may be justly entitled.

Respectfully submitted,

GORDON REES SCULLY MANSUKHANI

/s/ Soña J. Garcia

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SOÑA J. GARCIA

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214-461-4053 (Facsimile)

GARDERE WYNNE SEWELL LLP

PETER S. VOGEL

State Bar No. 20601500

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Dallas, Texas 75201

pvogel@gardere.com

214-999-3000 (Telephone)

214-999-4667 (Facsimile)

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was served pursuant to TEXAS RULES OF CIVIL PROCEDURE 21 and 21a on March 2, 2018.

/s/ Soña J. Garcia _____

Soña J. Garcia

CAUSE NO. DC-16-03141

PETER BEASLEY,

Plaintiff,

v.

SOCIETY OF INFORMATION
MANAGEMENT, DALLAS AREA
CHAPTER,

Defendant

§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT

DALLAS COUNTY, TEXAS

162ND JUDICIAL DISTRICT

**ORDER GRANTING ATTORNEY'S FEES TO DEFENDANT
AS PREVAILING PARTY ON DECLARATORY JUDGMENT CLAIMS**

On November 3, 2017, Defendant's Supplemental Motion for Sanctions seeking to have Defendant declared a prevailing party and request for attorneys' fees came on for hearing. The Court, having considered the pleadings, evidence, and arguments of counsel, is of the opinion that the Defendant's Motion should be **GRANTED**.

Based on the evidence presented and the procedural history of this lawsuit, the Court makes the following findings and conclusions:

1. Plaintiff filed certain declaratory judgment claims on April 15, 2016.
2. Defendant moved for summary judgment on those claims.
3. The hearing on the motion for summary judgment was scheduled for October 12, 2017, making Plaintiff's response due on October 5, 2017.
4. On October 5, 2017, in lieu of filing a response to the motion for summary judgment, Plaintiff nonsuited his entire case.

5. The following factors support a finding that the nonsuit was filed to avoid an unfavorable ruling on the merits:

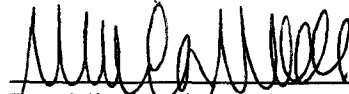
- (a) the timing of the nonsuit;
- (b) the strength of the motion for summary judgment;
- (c) the failure to respond to the motion;
- (d) the Plaintiff's prior litigation history, including a dismissal of all claims after resting his case during trial, which dismissal he then appealed to the Dallas Court of Appeals¹; and
- (e) Plaintiff's conduct during this very contentious litigation, including his conduct as a *pro se* party and as a Plaintiff in conjunction with five different appearances by lawyers, involving the resources of eight (8) different judges in six (6) different courts.

6. The reasonable and necessary attorney's fees and costs incurred by Defendant in defense of the declaratory judgment claims is \$ 211,032.02

IT IS THEREFORE ORDERED that Defendant is declared the prevailing party on Plaintiff's declaratory judgment claims and that, pursuant to TEX. CIV. PRAC. & REM. CODE ANN. § 37.009, Plaintiff Peter Beasley is hereby **ORDERED** to pay Defendant's reasonable and necessary attorney's fees and costs in the amount of \$ 211,032.02

¹ *Peter Beasley v. Seabrum Richardson and Lamont Aldridge*, in the Court of Appeals for the Fifth District of Texas at Dallas, No. 05-15-00156-CV (September 20, 2016)

SIGNED this 3 day of ~~October~~ ^{November}, 2017.



Presiding Judge

Tab G



**DALLAS COUNTY DISTRICT CLERK
FELICIA PITRE**

Sacheen Anthony

NINA MOUNTIQUE, CHIEF DEPUTY

4/20/2018

Peter Beasley
pbeasley@netwatchsolutions.com

Cause No. DC-18-05278 44th District Court (COLLIN 417-05741-2017)

Peter Beasley vs. Society of Information Management, Dallas Area Chapter et al

Dear Peter Beasley

In Accordance with the ***Rule 89 of the Texas Rules of Civil Procedure***, you are notified that a Transfer of the referenced case to a District Court of Dallas County, Texas has been completed.

The filing fee of 292.00 is due and payable within thirty days from the date of this letter. If the filing fee is not paid within 30 days, a motion to rule for cost will be filed.

Make payment to: Felicia Pitre, District Clerk 600 Commerce Street Ste. 101, Dallas, Texas 75202. Attention File Desk.

Please put the cause number on your check and send it with a copy of this letter. For further assistance, please direct all calls to the transfer desk at (214) 653-6548 of the Civil/Family District Clerk Office.

Sincerely,

SACHEEN ANTHONY, DEPUTY

Cc: